

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





**No. 74-1941**

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Page 5

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**United States Court of Appeals  
For the Second Circuit**

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**UNITED STATES OF AMERICA,**  
PLAINTIFF, APPELLEE,

v.

**WILLIAM MARRAPESE, ET AL.,**  
DEFENDANT, APPELLANT.

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ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF CONNECTICUT

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**APPENDIX TO  
BRIEF FOR DEFENDANT-APPELLANT  
(From Judgment and Sentence)**

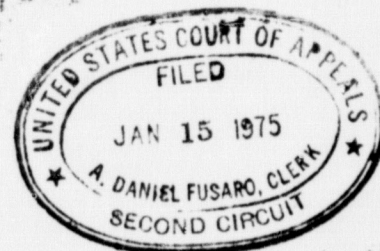
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By His Counsel,  
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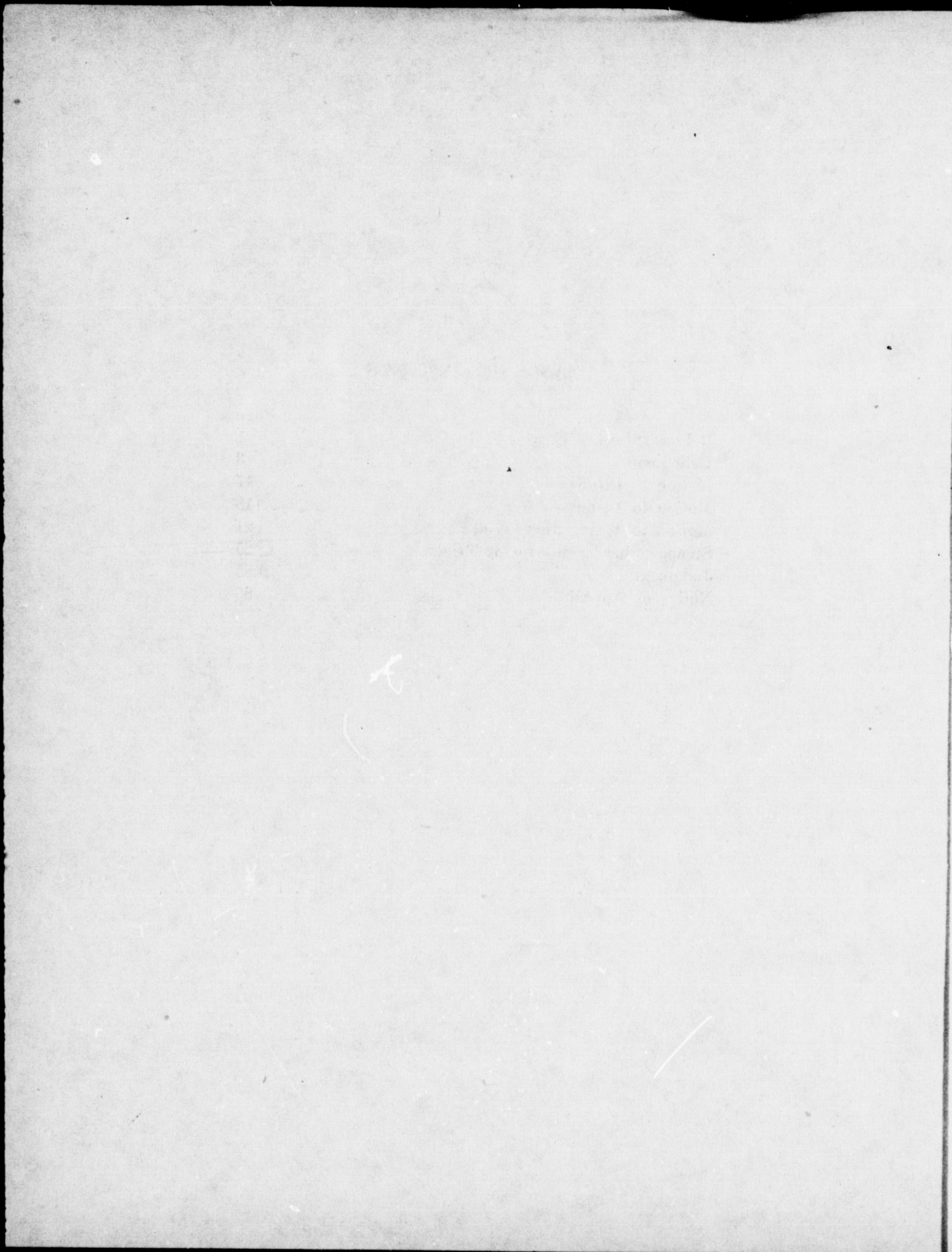


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## RELEVANT DOCKET ENTRIES

[Criminal No. H-524]

THE UNITED STATES

*v.*

WILLIAM MARRAPESE, ET AL.

WM. MARRAPESE — RAYMOND DANIELS

86 Weybosset St., Suite 502

Providence, Rhode Island 02903

Phone: (401) 351-3311

1973

- June 14 The Grand Jury at Hartford returned . . . Indictment charging violation of 18 USC 241 in ct. 1 . . . 18 USC 1503 in ct. 2 . . . 18 USC 844 (h)(1) in ct. 3 . . .
- 25 . . . Marrapese — Appearance filed by Atty. Bucci. Plea of not guilty entered on 3 counts . . .
- 29 The following motions were filed by defendant Marrapese:
- 2. Motion To Be Furnished With Evidence Favorable to the Accused . . .
  - 7. Motion To Dismiss For Prejudicial Publicity . . .
  - 10. Motion To Dismiss . . .
  - 14. Motion of the Defendant To Inspect Evidence . . .
  - 21. Motion For Discovery and Inspection . . .
  - 23. Motion To Dismiss Indictment.
  - 24. Motion To Dismiss (Counts 1, 11, and 111 . . .
- 25 Appearance of Andrew A. Bucci entered and filed to represent Defendant Marrapese . . .
- July 23 Hearing on 25 calendar motions . . .  
Motions to Waive Jury Trial, filed by Defts. Marrapese and Zinni, in open court. (Clarie, J.) m-7/24/73 . . .

## 1973

- Aug. 6 The following endorsements entered on Deft. Marrapese's Motions:  
 Motion To Dismiss, "July 31, 1973 The motion of the defendant Marrapese to dismiss the indictment is denied; so ordered." (Clarie, J.) . . .
- 25 Motion to Waive Jury Trial, "July 23, 1973 Court action held in abeyance, until just prior to trial, when the motion may be renewed; so ordered." (Clarie, J.) m-8/10/73 . . .
- Sept. 13 (Guillette) Motion To Suppress Testimony of John Housand and John Daniels along with Affidavit and Memorandum in Support of Motion to Suppress Testimony of John Housand and John Daniels, filed . . .
- 19 Defendants Marrapese and Zinni's Motion To Dismiss, filed . . .
- Oct. 19 Endorsement entered on Motion To Suppress Testimony of John Housand and Daniels, "The defendant Guillette's motion to suppress the testimony of John Housand and John Daniels is denied. So ORDERED." (Clarie, J.) . . .
- 24 . . . Hearing on Motion to proceed to Court Trial rather than Jury Trial — Deft. Zinni withdraws Motion, Deft. Marrapese renews Motion For Court Trial — Atty. Bucci renews Motion for Severance. Defts. Marrapese and Zinni are severed from cases of Defts. Joost and Guillette . . .

## 1974

- Jan. 10 . . . Jury returns . . . verdict of GUILTY on all three counts against Defendants Joost and Guillette . . .
- Feb. 4 . . . Briefs to be filed by Attys. Bucci, Coffey and Zinni concerning representation within 2



1974

- weeks, by 2/19/74. (Clarie, J.) M-2/5 . . .
- 11 Memorandum (re representation), filed by Deft. Marrapese . . .
- 19 Memorandum of the United States on the Representation of William Marrapese by Andrew Bucci, filed . . .
- Mar. 21 Memorandum of Decision with endorsement thereon, filed. Endorsement reads "3/22/74 Sealed until further order of the Court, So Ordered." (Clarie, J.) m-3/25/74 Copies sent registered mail to Atty. Bucci and Defendant Marrapese . . .
- Apr. 24 Appearance of William Marrapese before Court per Court's Order of 4/22/74 — Upon Inquiry by the Court, Mr. Marrapese advised that he has retained Atty. Raymond Daniels, Providence, Rhode Island to represent him. Court assigned trial date of May 21, 1974 at Waterbury, Conn. before Judge Murphy for both defendants (Zinni and Marrapese) . . .
- May 10 Appearance of Raymond J. Daniels, Esq., entered and filed, to represent the Defendant, William Marrapese . . .
- 28 JURY TRIAL: (Marrapese and Zinni) . . .
- June 4 . . . Def. moves to dismiss charge against Deft. Marrapese under Rule 29(a) . . . Motions Denied . . .
- 6 . . . Deft. Zinni's Request to Charge, filed — Deft. Marrapese's Request to Charge, filed . . . Deft. Marrapese moves for Judgment of Acquittal pursuant to Rule 29(a) . . . All motions DENIED with exceptions to each counsel . . .
- 10 . . . Court rules on Requests to Charge . . .



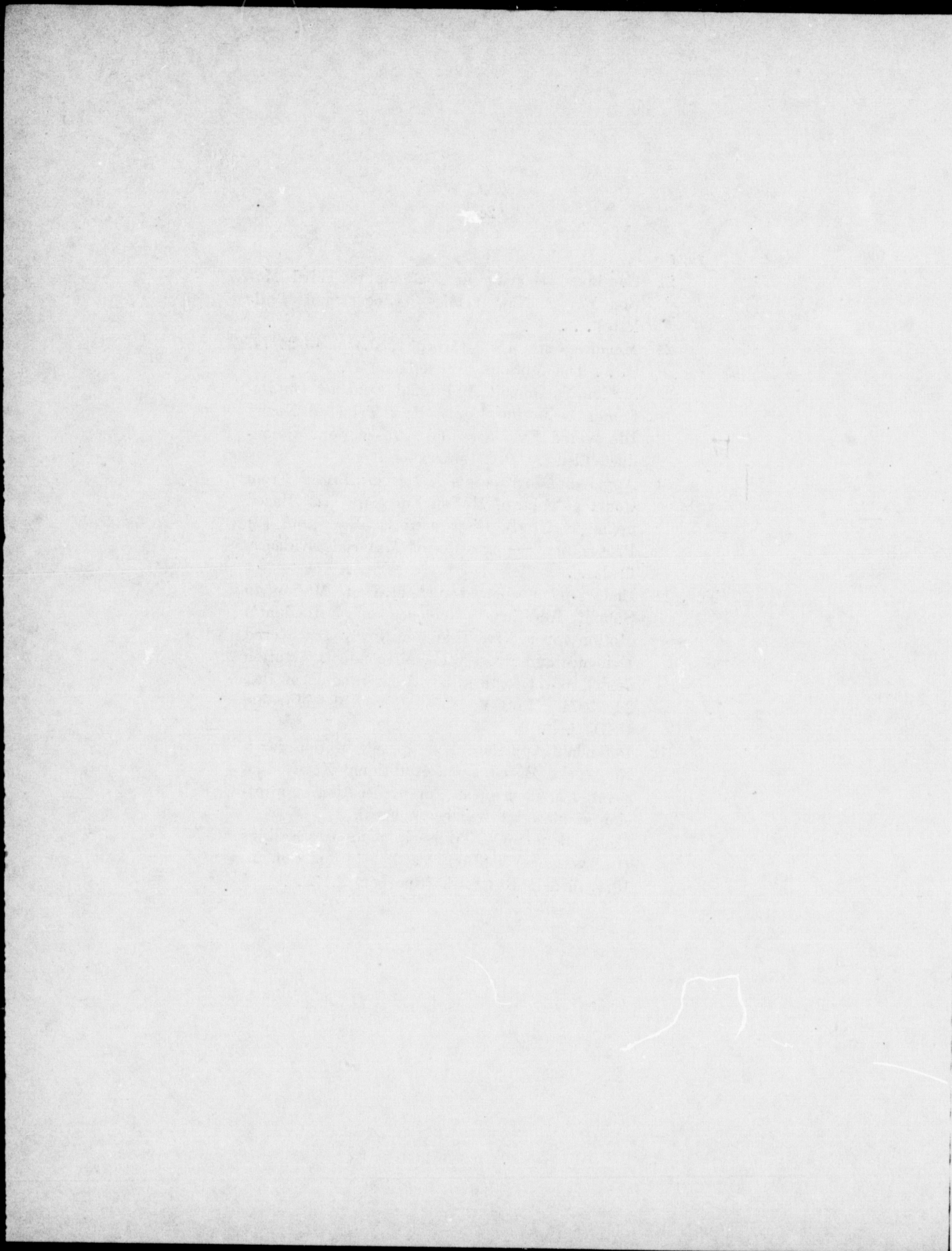
1974

- 11 . . . Exceptions to Charge noted by Deft. Marrapese . . .
- 12 . . . Jury returns to Courtroom with a verdict of GUILTY on all three counts as to each defendant . . .
- 18 Motions To Set Aside Verdict & For Judgment of Acquittal, For A New Trial & For Arrest of Judgment, filed by Deft. Marrapese . . .
- 26 Hearing held on Deft. Marrapese Motions To Set Aside Verdict & For Judgment of Acquittal, For A New Trial & For Arrest of Judgment . . . All motions denied . . .  
DISPOSITION: (3 counts) — Deft. Marrapese — imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentence of imprisonment imposed on counts 1, 2 & 3 are to run concurrently with each other. (Murphy, J.) m-6/28/74 . . .
- July 3 Motion To Be Furnished With Matters Exculpating Defendant, filed re Deft. Marrapese.
- 5 Defendant's Motion For A New Trial Based on: 1) Newly Discovered Evidence, and 2) Prosecution's Suppression of Material Evidence, filed. (RE: Deft. Marrapese)  
(Deft. Marrapese) Notice of Appeal, filed . . .
- Sept. 5 . . . Hearing held on Defts. Motion For New Trial . . .
- 6 Hearing on Deft's Motion For A New Trial Continues . . .
- 30 Court Reporter's transcripts (2 Vols.) of proceedings held on September 5 and 6, 1974, filed in Hartford. (Collard, R.)
- Oct. 3 Hearing on Defendants' Third Motion For a New Trial — (Joost and Guillette) . . .

1974

- 21 Continued Hearing on Defendants Third Motion For A New Trial — (Joost and Guille) . . .
- 24 Memorandum filed. (Murphy, J.) m-10/24/74. " . . . The Motions are denied." . . .
- 29 Motion To Submit Additional Evidence On Defendant's Motion For a New Trial on Newly Discovered Evidence and Prosecution Misconduct, filed by Deft. Marrapese.
- 31 Appellant Marrapese's *Notice of Appeal* From Court's Denial of Motion For New Trial Based upon (1) Newly Discovered Evidence and (2) Prosecution Suppression of Material Evidence, filed . . .
- Nov. 11 Endorsement entered and filed on Motion to Submit Additional Evidence on Defendant's Motion for a New Trial on Newly Discovered Evidence and Prosecution Misconduct. "Motion denied as set forth in our Memorandum of Oct. 29, 1974. Nov. 6, 1974, Thos M. Murphy, USDJ". . .
- 12 Defendant-Appellant Marrapese's Motion for a New Trial Based Upon Additional Newly Discovered Evidence, (and/or prosecution suppression of material evidence.), Filed.  
Court Reporter's Transcripts to Proceedings (two volumes) held on Oct. 3, 1974 and Oct. 21, 1974, filed in Hartford. (Sperber, R.) . . .





UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

DAVID GUILLETTE, ROBERT JOOST,  
WILLIAM MARRAPESE, NICHOLAS ZINNI

CRIMINAL NO. H524

COUNT ONE

From on or about May , 1972 until on or about September 22, 1972 in the District of Connecticut, and elsewhere, DAVID GUILLETTE, ROBERT JOOST, WILLIAM MARRAPESE, and NICHOLAS ZINNI, the defendants herein, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one Daniel Lapolla, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of him having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States v. William Marrapese, Nicholas Zinni, Robert Joost and David Guillette, Criminal No. H-264 ; and it is further alleged that this combination and conspiracy resulted in the death of Daniel Lapolla.

All in violation of Section 241, Title 18, United States Code.

COUNT TWO

On or about September 29, 1972, in the District of Connecticut David Guillette, Robert Joost, Nicholas Zinni and William Marrapese unlawfully, wilfully and knowingly endeavored, by force and violence, to influence, intimidate and impede Daniel Lapolla, a witness in a Court of the United States, a witness in the matter of the United States v. William Marrapese, Nicholas Zinni, David Guillette and Robert Joost, Criminal No. H-264, which was before the United States District Court for the District of Connecticut.

All in violation of Title 18, United States Code, Section :



COUNT THREE

On or about September 29, 1972, in Orisco, Connecticut In the District of Connecticut, David Guillette, Robert Joost, William Marrapese and Nicholas Zinni did wilfully, unlawfully and knowingly use an explosive, that is, a dynamite bomb, to commit a felony prosecutable in a court of the United States, said felony being the Influencing and Injuring by force a witness in a Court of the United States, i.e. one Daniel Lapolla and the Influencing and Injuring of said Daniel Lapolla for having so testified in a proceeding of the United States, thus impeding, obstructing and influencing the due administration of justice, in violation of Section 1503, Title 18, United States Code.

All in violation of Title 18, United States Code, Section 844 (h) (1).

A TRUE BILL

\_\_\_\_\_  
Foreman

STEWART H. JONES

\_\_\_\_\_  
UNITED STATES ATTORNEY

\_\_\_\_\_  
PAUL E. COFFEY  
SPECIAL ATTORNEY

**United States Court of Appeals  
For the Second Circuit**

---

**UNITED STATES OF AMERICA,  
PLAINTIFF, APPELLEE,**

*v.*

**WILLIAM MARRAPESE,  
NICHOLAS ZINNI,  
DEFENDANTS, APPELLANTS.**

---

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF CONNECTICUT

---

**BRIEF FOR DEFENDANTS-APPELLANTS**

---

By Their Counsel,  
ANDREW A. BUCCI  
*(William Marrapese)*  
9 Steeple Street  
Providence, Rhode Island  
JOHN A. O'NEILL, JR.  
*(Nicholas Zinni)*  
9 Steeple Street  
Providence, Rhode Island



of two (2) other persons in addition to these two (2) Defendants, appear thereon as Defendants . . . you will concern yourself only with the charges against the Defendants William Marrapese and Nicholas Zinni; they are the only two persons being tried at this time; and you should not speculate or draw any inference whatsoever concerning the disposition of the cases of the other two defendants or the status of those cases."

The only mention of Joost and Guillette being in the case, the only way that the jury could have concluded that they performed overt act three was to take the indictment itself as proof of a material element.

It might be submitted by the Government that the concealment of the M-16 rifles, independently proved, is the very essence of the third overt act. This may be true but who put them there? Was there proof that it was a member of the conspiracy? The answer is a simple — NO!

For the reasons set forth, both Appellants urge that this Honorable Court enter an order to dismiss the conspiracy count or in the alternative, grant them a new trial.

#### QUESTION

# 4

The trial court erred in admitting the tape recordings containing the Appellants' voices into evidence because they were a product of an unconstitutional invasion of privacy and otherwise unconstitutional.

The leading case cited by the Government for the admission of the type of testimony in question is *United States v. White*, 401 U.S. 745 (1971). In this case, a plurality of the court rejected Fourth and Fifth Amendment

arguments. It should be pointed out that *White* was a Seventh Circuit case and when considering this matter after the *White* decision was handed down, a district court justice sitting within the Seventh Circuit refused to follow the plurality's reasoning in the Supreme Court's opinion; but rather adhered to the Seventh Circuit's opinion 40 S1, F.2d 838, see *Bakes v. United States*.

It would seem that Judge Wills' decision in the *Bakes* case was well-founded for action by an equally divided court does not constitute precedent. *United States v. Pink*, 62 S. Ct. 552, 315 U.S. 203. It is therefore submitted that the *On Lee* and *Lopez* doctrines have been overruled by *Katz* and *Berger*. See 52 Boston U.L.R. 831.

The defense, however, would urge additional grounds other than the Fourth and Fifth Amendment areas argued in *White*. On January 22, 1973 the Supreme Court handed down *Roe v. Wade* and *Doe v. Bishop*. In both cases, the court indicated that the right of privacy was covered by the Ninth Amendment. The defense in the instant case would agree and urge that this right of privacy was infringed upon in the instant case.

The *Roe* and *Doe* cases involved abortion statutes and were at least partially based on Judge Goldberg's concurring opinion in *Griswold v. Connecticut*, 381 U.S. at 486 (a birth control case). Opponents of this Ninth amendment argument may argue that the aforementioned cases involve special areas of privacy. That argument can perhaps be answered best with a question. Is not a man entitled to talk freely in his own home or place of business?

The Government will answer, indeed, Mr. Coffey already has answered on page 142 of the transcript of motions heard by this court on January 29, 1973.



"I would call the court's attention particularly to the Hoffa case, *United States v. Hoffa* — I believe it is *Hoffa v. United States* — in which the Supreme Court said when a person is engaged in criminal activity, or in this case criminal conversation, he is not entitled to assume that the particular conversation is not being monitored by a third party. And he is not entitled to assume that the person to whom he is giving the criminal conversation is not going to turn it over to law enforcement officials."

For the court's purposes, the *Hoffa* case may be found at 385 U.S. 293.

It should be pointed out that the *Hoffa* case, along with *Lewis v. United States*, 385 U.S. 206 and *Lopez v. United States*, 373 U.S. 427, were all cases following the *On Lee* doctrine (see *On Lee v. United States*, 343 U.S. 747 (1952)). As many Supreme Court justices stated that these cases were overruled by *Katz v. United States*, 389 U.S. 347 and *Berger v. New York*, 388 U.S. 41 as did say that *On Lee* was still the law. Therefore, when the Government makes such a pronouncement relative to the *Hoffa* case it assumes a position which even the Supreme Court cannot agree upon.

Indeed a conspiracy is said to be an agreement between two or more persons to accomplish together a criminal or unlawful act or to achieve, by criminal or unlawful means, an act not in itself criminal or unlawful. *Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124. Thus, it would not seem that *Hoffa* could apply to Mr. Zinni without some showing of guilty knowledge on Mr. Zinni's part when he asked the question — "He wants to by the rifles?". This was Mr. Zinni's only connection with the case. It would seem that, in order for the doctrine in *Hoffa* to apply, one must first assume that the conversation was, in fact, criminal in nature.

This assumption requires an inference of guilt. The defense submits that not only would such a conclusion violate the Fourth, Fifth and Ninth Amendments, but would also do violence to the First.

Mr. Zinni's six words are in the form of a question. To hold that on the state of the evidence, that this question sufficiently implicates Mr. Zinni so as to render a verdict of guilty, justifiably runs contrary to the concept of free speech and indeed the desire of the Government to stop criminal actions.

Does it not seem logical that if one were to enter a room where two acquaintances were engaged in a conversation and, after hearing part of their conversation, not being sure of the import of the words heard, he would ask a question, and upon receiving an answer, determine whether or not he wanted to continue or depart from the conversation? Does a man become guilty of conspiracy to commit prostitution when he asks a prostitute how much she charges, or does he so implicate himself when he agrees to the tariff? Does one who overhears acquaintances planning to commit a bank robbery become guilty of so conspiring by asking them the question — "Are you guys going to rob a bank?"? Does not the answer to the question and the askor's decision constitute the agreement needed for a conspiracy? Suppose in the foregoing examples the askor said to the prostitute — "No, your price is too high." or "You guys have to be crazy." and walks away. Was he part of the conspiracy? The foregoing are affirmative acts displaying one's unwillingness to participate in the conspiracy, but suppose one stands mute or walks away in silence? Can the mere fact that he asked the question have bound him inextricably in the conspiracy? The defense thinks not, and would urge the court to so rule.



## QUESTION

# 7

That the court erred in admitting Government Exhibits 11 and 18 because there was no showing of consent on the part of Lapolla.

\* The Government has the burden of proving at trial that the informant voluntarily consented to the illegal cavedropping. *Bumper v. North Carolina*, 391 U.S. 543, 88 S. Ct. 1788; *Wren v. United States*, 352 F.2d 617; *Simmons v. Bomar*, 349 F.2d 365; *Judd v. United States*, 190 F.2d 649; *Kovach v. United States*, 53 F.2d 639. Its burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority. *Bumper v. North Carolina*, 391 U.S. 543, 88 S. Ct. 1788; *Amos v. United States*, 255 U.S. 313, 41 S. Ct. 266; *Johnston v. United States*, 333 U.S. 10, 68 S. Ct. 367; *United States v. Jones*, 292 F. Supp. 1001, 1008.

In the *Simmons* case supra, the petition brought a habeas corpus proceeding to test what he contended to be an illegal search and seizure. The court at page 366 said:

"Consent to search in order to be voluntary must be unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion and is not likely to be inferred. *United States v. Como*, 340 F.2d 891 (CA 2). The Government has the burden of proving such consent has been given. *McDonald v. United States*, 307 F.2d 272 (CA 10). *Judd v. United States*, 190 F.2d 649.

In *United States v. Como*, 340 F.2d 891 (1965), Judge Kaufman of this Circuit rendered the decision. In that case, Como was working as a special employee of the Fed-

eral Bureau of Narcotics along with other agents. They were trying to make a case against one Cangiano. Simultaneously, though independently, two agents were investigating the same suspect. After hearing that an unidentified person had bought heroin from Cangiano, agents went to the hotel where the purchase was made to determine the identity of the purchaser. When Como entered the hotel and asked for his room key, the agents approached him. Como told them that he himself was an agent, but they did not believe him; and the agents refused to make a call confirming Como's identity until he acknowledged the presence of heroin. The agents then arrested Como and searched the room.

"at 893, we recognize . . . that consent to a search is not to be lightly inferred." *United States v. Viale*, 312 F.2d 595, 601 (2d Cir. 1963). The guidelines are clear. An accused's voluntary consent must be proven by clear and positive evidence. A consent is not a voluntary one if it is the product of duress or coercion, actual or implied. Moreover, to be voluntary, a consent must have been unequivocal, specific, and intelligently given. *United States v. Smith*, 308 F.2d 657, 663 (2d Cir. 1962) cert. den. 372 U.S. 906, 83 S. Ct. 717. See also *Channel v. United States*, 284 F.2d 217, 219 (9th Cir. 1960).

The trial court also adopted *United States v. McKeever*, 169 F. Supp. 426 as the law in this case. The seventh prong of the *Solomon* test adopted by McKeever is that the testimony elicited was freely and voluntarily made without any kind of duress.

For the reasons submitted, the Appellants urge this Honorable Court to grant them a new trial.



## STATE v. TELLA

Cite as 321 A.2d 87

R. I. 87

STATE

v.

William E. TELLA.

No. 73-83-C.A.

Supreme Court of Rhode Island.

June 12, 1974.

Defendant was convicted in the Superior Court, Providence and Bristol Counties, Gallant, J., of receiving stolen property, and he appealed. The Supreme Court, Joslin, J., held that information which may have been obtained in September, 1970, could not support issuance of search warrant in August, 1971.

Reversed and remitted.

Roberts, C. J., did not participate.

## 1. Criminal Law ⇨1081(2)

Notice of intention to prosecute bill of exceptions filed before effective date substituting appeal for bill of exceptions in criminal cases, could be treated as notice of appeal, even though bill was not perfected.

## 2. Searches and Seizures ⇨3.6

Information which may have been obtained in September, 1970, could not support issuance of search warrant in August, 1971.

## 3. Searches and Seizures ⇨3.6(1)

Affidavit supporting issuance of search warrant must furnish issuing magistrate with sufficient facts to permit reasonable conclusion that property which is object of search is on premises at time of issuance.

1. Following the defendant's conviction and the filing of his notice of intention to prosecute a bill of exceptions, Rule 4(b) of our rules became effective. It substituted an appeal for

## 4. Searches and Seizures ⇨3.6(2)

Without showing of probable cause for believing that property which is object of search is on premises at time of issuance of warrant, even the most convincing proof that property may have been on premises at some remote time in the past will not justify present invasion of privacy.

## 5. Searches and Seizures ⇨3.6(1)

For purpose of determining timeliness or staleness of information presented to support search warrant, court would treat averments of affidavit as if they related to most remote date on which observations might have been made.

## 6. Searches and Seizures ⇨3.5

Criminal rules of evidence do not bind magistrates when they pass upon probable cause for issuance of search warrant.

## 7. Searches and Seizures ⇨3.6(2)

Existence of timely probable cause for issuance of search warrant should not turn on whether affidavit's verbs are cast in present tense or past tense.

Richard J. Israel, Atty. Gen., Donald P. Ryan, Asst. Atty. Gen., Edward E. Dillon, Jr., Sp. Asst. Atty. Gen., for plaintiff.

Raymond J. Daniels, Providence, for defendant.

## OPINION

JOSLIN, Justice.

[1] This appeal arises from the trial and conviction of the defendant before a judge and jury in the Superior Court on three indictments, each of which charged him with receiving stolen property in violation of G.L. 1956 (1969 Reenactment) § 11-41-2.<sup>1</sup> Because we find that the evi-

a bill of exceptions as the means of securing appellate review of criminal proceedings in the Superior Court. In these circumstances, we treat his notice of intention to prosecute a bill

dence upon which those indictments and convictions were based was the product of a search made pursuant to an invalid search warrant, we reverse.

On August 24, 1971, Sergeant Lionel J. Benjamin of the Rhode Island State Police presented a District Court judge with an application for a warrant to search certain premises owned by defendant and located at 731 Central Avenue in the town of Johnston. Annexed to the application was a four-page, single-spaced, typewritten affidavit wherein the sergeant states that on July 19, 1971, he met with an unnamed, reliable informant who gave detailed information about his participation in five "breaks," the first of which occurred on July 21, 1969, and the last on September 16, 1970. According to the informant, approximately \$143,000 worth of precious metals and other contraband stolen in those breaks was delivered at undisclosed times to defendant's residence in Johnston.

The affidavit further advises that the informant stated that "there is a precious metal scale located in the cellar portion of [defendant's residence] \* \* \* and that there is also a large type service scale located in the back yard which is used by [defendant] to weigh said stolen precious metals and other contraband"; that in the rear yard of defendant's residence "there is a green cinder block type structure \* \* \* which [defendant] uses for the purposes of melting stolen precious metals and that within said structure is kept molds, electric and gas melting pots"; that "each time" the stolen precious metals were taken to defendant's residence they would be "weighed and the weight would be recorded"; that in the cellar portion of defendant's residence is "an office in which the records of all transactions in

stolen precious metals and contraband are kept"; and that he (the informant) would then report to the Small State Coin Company, Providence concern which was operated by defendant and his brother, where he would be paid for the stolen merchandise in cash.

During the slightly more than one month which intervened between these disclosures and the August 24th application for a warrant, the police conducted extensive independent investigations which verified what the informant had related about the breaks and the amounts involved therein. This investigation and verification made it possible for the sergeant to declare in the affidavit his belief in the informant's reliability.

On the strength of that affidavit, the District Court judge issued a search warrant on August 24, 1971. It particularly described defendant's cellar and adjacent cinder-block structure as the places to be searched and the above-mentioned records, scales, molds, and melting apparatus as the things to be seized.<sup>2</sup> It was executed on the next day, and the property seized included not only the articles described therein but also firearms, rugs, and electronic equipment which, at the trial, the state attempted to prove were stolen merchandise.

Following the return of the indictments, defendant moved to suppress the seized evidence on the ground that the search had been based on an illegal warrant. That motion was denied and the challenged evidence was thereafter admitted at the trial and provided the basis for defendant's conviction.

[2, 3] The defendant attacks the affidavit on the ground that by the time it was presented to the District Court judge, its

of exceptions as a notice of appeal, even though that bill was not perfected. *State v. Lombardi*, R.I., 319 A.2d 346 (1974).

2. The warrant describes the property or articles to be searched for as:

"Records & Files indicating purchases, sales & shipments of precious metals. Precious metal scales, precious metal molds, Gas & Electric melting parts [sic]. Books indicating value, purchase, sales transactions and shipments of precious metals."



contents had become so stale as to make it facially incapable of supplying the probable cause requisite to the issuance of a warrant. The success of that attack hinges upon whether the affidavit's contents furnished the issuing magistrate with sufficient facts to permit a reasonable conclusion that the property which was the object of the search was actually on the premises to be searched at the time the warrant issued.<sup>3</sup>

[4] That requirement demands a showing in the affidavit of " \* \* \* facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time." *Sgro v. United States*, 287 U.S. 206, 210, 53 S.Ct. 138, 140, 77 L.Ed. 260, 263 (1932).<sup>4</sup> Without that showing of timely probable cause, even the most convincing proof that the property to be seized may have been on the premises to be searched at some remote time in the past will not justify a present invasion of privacy. *Durham v. United States*, 403 F.2d 190, 193 (9th Cir. 1968).

Whether the sergeant's affidavit, which supported the issuance of the warrant in this case, measures up to these standards must be determined by viewing it "in a commonsense and realistic fashion," without insistence upon "technical requirements" and unhampered by a "grudging or negative attitude." *United States v. Ventresca*, 380 U.S. 102, 108, 85 S.Ct. 741, 746,

3. *Sgro v. United States*, 287 U.S. 206, 53 S.Ct. 138, 77 L.Ed. 260 (1932); *Murby v. United States*, 2 F.2d 56 (1st Cir. 1924); Annot., 100 A.L.R.2d 525, §§ 5-7 (1965), including *Later Case Service*, and cases collected therein; *Mascolo, The Staleness of Probable Cause in Affidavits for Search Warrants: Resolving the Issue of Timeliness*, 43 Conn.B.J. 189 (1969), and cases cited therein.

4. The procedures described in the *Manual for United States Magistrates* (1972), issued by the Administrative Office of the United States Courts, explicitly states at pages 7-3 and 7-4 that:

"A search warrant should not be issued unless the showing made in connection with

321 A.2d—6½

13 L.Ed.2d 684, 689 (1965); *State v. LeBlanc*, 100 R.I. 523, 530-531, 217 A.2d 471, 475 (1966).

Here, the affidavit furnishes us with the dates of the informant's breaks, and it tells us what he observed when, following each break, he delivered the stolen goods to defendant's premises. But it does not advise us of the particular time when he made those deliveries and had an opportunity to observe the conditions he described to the sergeant.

Undated information of that character from an anonymous source would be fatal to the issuance of a warrant if the affidavit were also lacking in reasonably specific clues relevant to the issue of timely probable cause. *Rosencranz v. United States*, 356 F.2d 310, 318 (1st Cir. 1966); *Neely v. Commonwealth*, 269 Ky. 451, 107 S.W.2d 305 (1937); cf. *State v. Butts*, 97 R.I. 147, 151, 196 A.2d 415, 417 (1964). This affidavit, however, contains averments from which it can be concluded that the informant's observations must have been made within the time span which commenced on September 16, 1970—the date of the last break—and ended on July 19, 1971—the date of his disclosures to Sergeant Benjamin.

[5] True, the affidavit does not pinpoint when, in that time span, those observations were made. But we fill that gap in the same manner as do those courts

the application therefor clearly indicates probable cause that the property to be seized is actually at the place to be searched \* \* \*

"A showing to the effect that the property to be seized was at the place to be searched a substantial time before the application was made does not justify the issue of a search warrant, for the reason that during the intervening period the property may have been moved away. The facts must show that the property to be seized was known to be at the place to be searched so recently as to justify the belief that the property is still there at the time of the issuance of the search warrant."

faced with averments that observations were made "within" a specified period, that is, as if they occurred not throughout the duration of that time span, but on the most remote date within that span. *State v. Hoffman*, 516 P.2d 84 (Or.App.1973); Annot., 100 A.L.R.2d 525, 532-533 (1965), and cases collected therein. In this case that would be September 16, 1970, the date of the last break.

What we must determine, then, is the timeliness or staleness of the informant's September 16, 1970 observations when brought before the magistrate on August 24, 1971. We can turn to no hard and fast rule for the answer. *United States v. Guinn*, 454 F.2d 29, 36 (5th Cir. 1972). Instead, we must consider the particular facts of this case, taking into account not only the time differential, but also " \* \* \* the nature of the criminal activity, the length of the activity, and the nature of the property to be seized \* \* \*." *United States v. Johnson*, 461 F.2d 285, 287 (10th Cir. 1972).

Here, to be sure, after each of the five breaks the informant observed equipment presumably used in promoting criminal activity by converting stolen precious metals into readily salable form. But the propriety of the issuance of the warrant depended upon the assumption of that equipment's continuing presence at the same location, and upon the further inference that the same criminal activity continued for the more than 11 months which intervened between the informant's September 16th observations and the August 24th issuance of the warrant.

[6] The rules of evidence which obtain at criminal trials do not bind magistrates

5. The state does cite *United States v. Guinn*, 454 F.2d 29 (5th Cir. 1972), where, owing to special circumstances, a lag of almost seven months was held not to be too great. The usual dividing line between what is stale and what is timely, however, is 30 days. See Annot., 100 A.L.R.2d 525, 534-42 (1965). This was recognized in *Schoeneman v. United*

when they pass upon probable cause. *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S. Ct. 1509, 1514, 12 L.Ed.2d 723, 729 (1964); *Draper v. United States*, 358 U.S. 307, 311, 79 S.Ct. 329, 332, 3 L.Ed.2d 327, 331 (1959); see *State v. Nerney*, 110 R.I. 364, 292 A.2d 882 (1972). Just because those rules are relaxed, however, does not mean that inferences should be pyramided in order to find timely probable cause, particularly when the state has been unable to cite a single case wherein the time differential between the observations and the warrant has even approached 11 months.<sup>5</sup>

The state argues, however, that the apparent remoteness resulting from the 11-month-plus time interval has been overcome because the sergeant's affidavit is couched in the present tense and quotes the informant as saying that " \* \* \* there is a precious metal scale located in the cellar portion of this house \* \* \* there is also a large type service scale located in the back yard \* \* \*," and "there is located in the cellar portion of [defendant's] residence an office in which the records of all transactions in stolen precious metals and contraband are kept." (emphasis added)

In support of this contention the state relies primarily on *Borras v. State*, 229 So.2d 244 (Fla.1969), appeal dismissed and cert. denied, 400 U.S. 808, 91 S.Ct. 70, 27 L.Ed.2d 37 (1970). There, the court held that an affidavit's failure to state when marijuana was sold to a confidential informant and was possessed by the defendant was not fatal to the validity of the search warrant. The court's only rationale was that the affidavit used the present tense in alleging a violation that continued right up to the time the warrant issued.

*States*, 115 U.S.App.D.C. 110, 317 F.2d 173, 177 (1963), where the court noted:

" \* \* \* we cannot overlook the fact that the Government could cite, and we could find, no case which sustained a search warrant issued more than 30 days after finding of the evidence which constituted the basis for the search."



## STATE v. TELLA

Cite as 321 A.2d 87

R. I. 91

[7] But in our judgment the existence or nonexistence of timely probable cause should not turn on whether the affidavit's verbs end in "s" or "ed." Such an approach would be overly mechanical, contrary to the admonition against "an unduly technical and restrictive reading," *United States v. Ventresca*, *supra* at 111, 85 S.Ct. at 747, 13 L.Ed.2d at 691, and subject to the dangers referred to in *Rosenkrantz*, where the court said: \*

"Officers with information of questionable recency could escape embarrassment by simply omitting averments as to time, so long as they reported that whatever information they received was stated to be current at that time. Magistrates would have less opportunity to perform their 'natural [sic] and detached' function. Indeed, if the affidavit in this case be adjudged valid, it is difficult to see how any function but that of a rubber stamp remains for them." 356 F.2d at 316-317.

While these pitfalls cannot be ignored, it must also be recognized that there will be cases where the use of the present tense, when viewed in the context of the surrounding circumstances, may inferentially demonstrate a continuum of probable cause from the time of the observations down to the time the warrant issues.

Thus, for example, in *United States v. Unger*, 469 F.2d 1283, 1287-1288 (7th Cir. 1972), cert. denied, 411 U.S. 920, 93 S.Ct. 1546, 36 L.Ed.2d 313 (1973), the facts were recited in the present tense, with rhetoric indicating that the undated events and observations had occurred recently. In addition, the citizen-informant's awareness of the potential for harm of the observed arsenal of dangerous weapons created a likelihood that he would "act upon his discovery with a degree of immediacy," and buttressed the timeliness of the complaint for the warrant. In *Coyne v. Watson*, 282 F. Supp. 235, 238 (S.D. Ohio 1967), the court

found that the affidavit's recital "'that there is urgent necessity that said premises be searched in the night, to prevent said things from being concealed or removed so as not to be found'" was language which "shows on its face that the information received by the officer was recently contemporaneous and was to the effect that the machine gun was 'now' in the possession of Coyne on the described premises."

But those cases are clearly distinguishable from this one. The underlying circumstances disclosed by the affidavit in this case do not reasonably yield an inference that the information received was "recently contemporaneous," or that the informant, notwithstanding his silence after four previous breaks, was suddenly compelled to tell all.

In sum, we find that there was nothing in the affidavit from which the District Court judge could have reasonably concluded that any of the described objects remained on the defendant's premises beyond the most remote date of the time span appearing therein, or even that they continued during the lapse of more than a month between the disclosures and the application for a warrant. The affidavit failed to disclose any basis for a finding that the described things were probably present in defendant's cellar or in the adjacent cinder-block structure when the warrant issued. Accordingly, we are compelled to conclude that the August 24th search warrant was invalid, that the search pursuant thereto was unlawful, and that the evidence seized in that search should have been suppressed. Because this conclusion is dispositive, there is no need to consider defendant's other arguments.

The defendant's appeal is sustained, the judgment appealed from is reversed, and the case is remitted to the Superior Court for further proceedings.

ROBERTS, C. J., did not participate.

FILED

JUN 29 10 42 AM '73

CLERK  
U.S. DISTRICT COURT  
HARTFORD, CONN.

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS. :

CRIMINAL NO. 524 :

DAVID GUILLETTE, ROBERT JOOST,  
WILLIAM MARRAPESE, NICHOLAS ZINNI :

MOTION TO DISMISS

Now comes the defendant in the above-entitled matter and moves this Honorable Court to dismiss Counts I, II, and III in that this Honorable Court has no jurisdiction and that all Counts are brought unconstitutionally.

WILLIAM MARRAPESE  
By his Attorney,

Andrew A. Breen

CERTIFICATION

I, Karen Hagen, hereby certify that on the 27<sup>th</sup> day of June, 1973, I mailed a copy of the foregoing to Paul Coffey Esq., U.S. Federal Building, Main Street, Hartford, Connecticut.

Karen Hagen

FILED

AUG 6 10 57 AM '73

CLERK  
U.S. DISTRICT COURT  
HARTFORD, CONN.

July 31, 1973

"The motion of the defendant Marrapese to dismiss the indictment is denied as requested."

Andrew A. Breen  
4/3/83



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

VS.

DAVID GUILLETTE, ET AL

:  
:  
:  
:  
:

Criminal No. H-524

MOTION TO DISMISS

1. That on or about the 5th day of May, 1972 the defendant was indicted by a federal grand jury for the District of Connecticut sitting in Hartford on three substantive counts involving federal violations and one count of conspiracy.
2. That one Daniel LaPolla testified before that grand jury, and that his testimony was instrumental in obtaining the aforementioned indictment.
3. That certain sound recordings taken by Daniel LaPolla were presented to the aforementioned grand jury and the identification of the voices on the recording were made before the grand jury.
4. That on or about September 29, 1972 Daniel LaPolla was killed at his home in Oneco, Connecticut.
5. That there was widespread publicity concerning the killing as well as the fact that LaPolla was a possible federal witness against the accused.
6. That a spokesman for the prosecution told the news media that LaPolla was killed shortly after the government disclosed LaPolla's

identity to the defendants pursuant to the applicable rules of discovery.

7. That during the month of December the defendant was tried on the charges for which he was indicted as indicated in Paragraph 1.

8. That the daily happenings of that trial, both of happenings in and out of the presence of the jury, were widely reported in newspapers of general circulation in the Hartford area.

9. That the trial of the defendant was held in the same building where the grand jury was sitting.

10. That the grand jury that indicted the defendant was sitting at the time of the defendant's trial.

11. That the members of the grand jury had general accessibility to the courtroom in which the defendant was tried.

12. That on or about the 22nd day of December, 1972 the defendant was convicted on the aforementioned indictment."

13. That the conviction was widely reported in newspapers of general circulation in the Greater Hartford area.

14. That on or about March 16, 1973 Judge Clarie granted Defendant Marrapese's Motion of Acquittal N.O.V. with respect to the substantive charges against him.

15. That the action mentioned in #14 was widely reported in the newspapers of general circulation in the Greater Hartford area.



16. That the defendant, with others, was called before the same grand jury that had indicted him as mentioned in Paragraph 1 to give palm prints.

17. That the defendant refused and was ordered to give his prints and complied with such order.

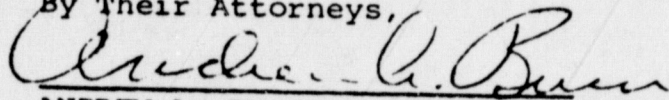
18. That the giving of the prints was in connection with the death of Daniel LaPolla.

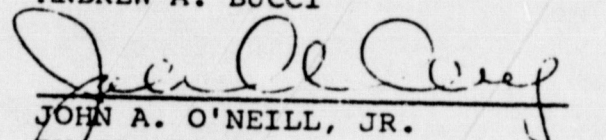
19. That the same grand jury that indicted as indicated in Paragraph 1 and requested palm prints as indicated in Paragraphs 17 and 18 indicted defendants on the instant charge.

20. That the aforesaid grand jury could not help but to have been prejudiced against the defendant.

WHEREFORE, the defendant prays that this Honorable Court issue an Order dismissing the indictment against him.

William Marrapese and Nicholas Zinni  
By Their Attorneys,

  
ANDREW A. BUCCI

  
JOHN A. O'NEILL, JR.  
BUCCI, O'NEILL & COIA  
9 Steeple St., Prov., RI 02903

CERTIFICATION

I hereby certify that on this            day of            , 1973  
I mailed a copy of the foregoing Motion to Paul Coffey, Federal  
District Attorney, U.S. Federal Bldg., 450 Main St., Hartford, Conn.

\_\_\_\_\_  
Jacqueline Beaulieu

United States District Court  
District of Connecticut  
FILED AT HARTFORD

UNITED STATES DISTRICT COURT OF A. Bucci, Clerk  
DISTRICT OF CONNECTICUT  
Deputy Clerk

FILED

AUG 6 1973

CLERK  
U.S. DISTRICT COURT  
HARTFORD, CT 06103

UNITED STATES OF AMERICA

VS.

:

CRIMINAL NO. 524

:

DAVID GUILLETTE, ROBERT JOOST,  
WILLIAM MARRAPESE, NICHOLAS ZINNI :MOTION TO WAIVE JURY TRIAL

Now comes the defendant and alleges as follows:

That at the time of the arraignment, the prosecutor proffered to this Honorable Court, that the suggested bail on two (2) of the defendants, viz. Guillette and Joost, should be \$100,000.00 as to each and that the bail as to the defendants Marrapese and Zinni should be \$50,000.00.

Said above-mentioned suggested bail was made in that the prosecutor offered that the cases against Guillette and Joost were much stronger than that as against Marrapese and Zinni.

After being fully advised by my counsel, Andrew A. Bucci, as to my rights to a trial by jury, and after considering all the ramifications of a trial without a jury, and that the Honorable Court, sitting without a jury, would make all the findings of fact and law, I do hereby request that this Honorable Court allow a trial without a jury.

This request is made in view of the prosecutor's allegations as to the strength of the cases against his co-defendants, Guillette and Joost as opposed to the relative strength against him.

William Marrapese  
WILLIAM MARRAPESE

Subscribed and sworn to before me at Providence this 20<sup>th</sup> day of July, 1973.

Joseph P. Bucci

July 20, 1973  
"Cost of trial held in chambers, matter first from the 21st, which was then moved to the 22nd, and then to the 23rd."



the  
 "It is true that bill requires that the criminal conduct prescribed in section 245 (a) must, in order to be punishable as a federal crime, be committed "because of a victim's race, color, religion or national origin" and because the victim sought to engage in a protected activity."

Senator Hart - Jan. 18, 1968, pg. 319-320,  
 Congressional Record.

"It is true, of course, that there is much crime that is not racially motivated. But we have state and local agencies which are willing and, for the most part, able to deal with this parallel problem."

Senator Hart - Jan. 18, 1968, pg. 320,  
 Congressional Record.

"The separate issue to which the Judiciary Committee's bill directs its attention is the problem of inadequacy of local handling of racially motivated crime. H.R. 2516 is an attempt to assure the presence and deterrent effect of law enforcement in situations where too often, local law enforcement has been unwilling or unable to protect a portion of the population it is sworn to protect." (Emphasis added by Appellant)

Senator Hart - Jan. 18, 1968, pg. 320, Congressional Record.

"Specifically H.R. 2516 would punish interference or attempts to interfere, by force or threat, with any person because of his race, color, religion or national origin and because such person had been seeking to engage in specifically enumerated activities." (Emphasis added by Appellant)

Senator Hart - Congressional Record, Jan. 18, 1968, pg. 317.

"Also punishable would be violence directed against persons not involved in civil rights activity, where such persons are selected as victims to intimidate others."

Senator Hart - Congressional Record, Jan. 18, 1968, pg. 318.

"Forceable interference with any of the activities set out in the bill would be prohibited whether committed by persons acting under color of law or by private individuals. Persons acting alone, as well as conspirators, would be reached by the bill's prohibitants." (Emphasis added by Appellant)

Senator Hart - Congressional Record, Jan. 18, 1968, pg. 318.

"H.R. 2516 is such a law. It does respond to the comment of Justice Brennan. Its clear language will avoid unnecessary litigation concerning coverage and will provide an unmistakable warning to lawless elements not to interfere with the activities protected by the bill." (Emphasis added by Appellant)

Senator Hart - Congressional Record, Jan. 18, 1968, pg. 319.

"This is a curious bill. It makes jurisdiction of the Federal courts in Federal cases depend on diversity of color."

Senator Ervin - Jan. 18, 1968, pg. 329, Congressional Record.

"I agree with my good friend, the floor manager of the bill, that it is wrong to deprive any man of the right to exercise his constitutional rights or rights under Federal law. However, why should the Federal courts have jurisdiction over a murder committed to deprive a man of his constitutional rights only in cases where the man who was murdered belonged to a different race than the accused."

Senator Ervin - Jan. 18, 1968, pg. 329, Congressional Record.

"The bill is not tailored for a particular region. It is restrained in its reach with respect to Federal Power because it is our belief that most violence directed against citizens finds adequate enforcement in State courts. However, we find



further that there is a need now, based on the record, for legislation. We find in those cases where racial motivation is involved in the crime that Federal protection needs to be available."

Senator Hart - Jan. 19, 1968, pg. 398, Congressional Record.

"We do not propose that we shall make murder across the country a Federal crime. We do propose within the bill pending that when there is a deprivation of rights because of race, there shall be available Federal protection."

Senator Hart - Jan. 19, 1968, pg. 398, Congressional Record.

24

25

\* \* \*  
[9] "It was the object of said conspiracy that

the above-named defendants, having obtained

1 [10] possession of thirty (30) stolen United States  
2 Army M-16 A-1 machineguns, would transport said  
3 firearms from Westerly, Rhode Island to Oneco,  
4 Connecticut, where the weapons would be concealed  
5 on or near the residence of Daniel LaPolla, of  
6 Oneco, Connecticut until such a time as the  
7 aforementioned defendants could ultimately  
8 dispose of said firearms."

9 "OVERT ACTS: In furtherance of the  
10 conspiracy and to accomplish the objects thereof,  
11 the defendants performed the following overt acts:

12 1. On or about November 21, 1971 in the  
13 District of Connecticut, defendants DAVID GUILLETTE,  
14 ROBERT JOOST, WILLIAM MARRAPESE and NICHOLAS ZINNI  
15 drove in two vehicles to Oneco, Connecticut.

16 2. On or about November 21, 1971 all of  
17 the above named defendants deposited twenty-nine  
18 (29) M-16 A-1 machineguns in the bedroom of  
19 Daniel LaPolla, Spring Lake Road, Oneco,  
20 Connecticut.

21 3. On or about November 23, 1971 defendants  
22 Joost and Guillette, at Oneco, Connecticut  
23 wrapped twenty-nine (29) M-16 A-1 machineguns in  
24 a gargabe disposal bag and dumped the weapons in  
25 a quarry in Oneco, Connecticut."



7 [570] Q What was the reason that you know for going  
8 to Oneco at that time?

9 A Mr. LaPolla had some jewelry or something, I  
10 think, if I remember right -- I'm not really sure. I'm  
11 pretty sure. -- that belonged to Mr. Marrapese.

\* \* \*

1 [591] THE COURT: Did he say anything else?

2 THE WITNESS: He identified himself,  
3 I remember, because the man wanted identification  
4 and he showed him some identification, who he  
5 was.

6 BY MR. DANIELS:

7 Q Now, in showing the man identification, was  
8 this in the form of some kind of a card?

9 A Yes.

10 Q And did the card bear any name as to whose  
11 card it was?

12 A William Marrapese.

13 Q Now, on this card -- was this given to  
14 this individual in the gas station?

15 A No.

16 Q Was it shown to him by Mr. Marrapese?

17 A Yes.

18 Q And on the card it said William Marrapese?

19 A Yes.

20 Q All right.

21 THE COURT: What was it, like a calling

22 card?

23 THE WITNESS: No. It's an identification  
24 card that he has from the service. I think it's  
25 from the service.

\* \* \*

3 [956] Q Did you receive instructions from  
4 Attorney Bucci when you were originally hired, what to  
5 do if you saw Mr. LaPolla?

6 A Yes, sir.

7 Q Did this include having Mr. LaPolla contact  
8 Mr. Bucci?

9 A Yes, sir.

\* \* \*

25 Q What were you to do under those circumstances

1 [957] as instructed by Mr. Bucci?

2 A Identify myself and advise them of my exact  
3 purpose in the area.

\* \* \*

1 [920] Q And was anyone with you?

2 A My mother and my sister.

3 Q And what is your mother's name?

4 A Mrs. Carmella Monticalvo.

5 Q And how old was she?

6 A She will be 81 September.

7 Q And you sister you say was also there?

8 A Yes.

9 Q- That would be William Marrapese's aunt?



10 A Yes.

11 Q And what was her name?

12 A Mrs. Mary D'Ambra, and she happens to be  
13 Father LaPolla's mother's godchild. .

14 Q Could you explain that, please?

15 A Father LaPolla's mother is my sister Mary's  
16 godmother.

17 Q I see. Is that something to do with a baptism?

18 A Yes. She baptized her.

19 Q Who baptized her?

20 A Father LaPolla's mother baptized my sister Mary,  
21 Mrs. D'Ambra.

22 Q Is there some type of relationship between  
23 the LaPollas, Monticalvos and Marrapeses dating back to  
24 the grandparents?

25 A Not the Marrapeses. The Monticalvos. The

[921] Monticalvos way back, the grandmothers -- between the  
2 grandmothers and the Petronellas which are the LaPolla  
3 family.

4 Q Then there is a relationship between the  
5 LaPollas and the Marrapeses dating back --

6 A Yes. Distantly.

\* \* \*

1 ||  
2 [640] matter of fact, I have the book here. He signed the  
3 Register and it was a Mr. O'Neill that signed it with  
4 him.

5 Q May I have that Register, please?

6 A (Hands document) Somewhere in there the  
7 names are there.

8 Q This Register which you handed to me, what  
9 does that reflect?

10 A Well, it was placed at the back side of the  
11 Church so that whoever came into Church would sign it  
12 and then when everything was over, we would look through  
13 the Register to see which friends had come in.

14 Q Was it the same Register that was kept the  
15 previous day at the wake?

A Yes.

\* \* \*

18 [975] Q Well, did Mr. O'Neill show any kind of a calling  
19 card or a name card that you observed to Mr. and Mrs. Ezzel  
20 at the gas station?

21 A Yes.

\* \* \*

13 [983] Q Where did you go after that?

14 A After we had lunch, we went -- I believe it  
15 was almost right across the street to a bicycle shop.

16 Q And was anything purchased?

17 A Yes. Mr. Marrapese purchased a bicycle.

18 Q A bicycle?



19 A Yes.  
20 Q For whom?  
21 A For his daughter.  
22 Q That is his daughter, Patricia?  
23 A Yes.  
24 Q Is she in the court room today?  
25 A Yes.

1  
2 [984] Q Is this the young lady (indicating)?  
3 A Yes.  
4 Q And what was the occasion for the purpose of  
5 the bicycle at that time?  
6 A It was for his daughter's birthday.  
7 Q This was September the 27th, 1972; is that  
8 correct?  
A Yes.

\* \* \*

17 [1605] But when you go into the jury room, you collectively  
18 have to try and remember all the facts and the  
19 overwhelming consideration which you have before  
20 you in the jury room is, first of all, did a man  
21 die? Secondly, he died because he was a witness.  
22 And third, there were only four people in the  
23 world who had a motive to prevent him from testifying.  
24 And when you consider that, you will reach the  
25 conclusion and be able to analyze all the other

1 [1606] little isolated instances which have been shown  
2 to you, and you will be able to understand why  
3 these particular incidents took place.

\* \* \*

10 [1610] A big point is made on cross examination.  
11 It was brought out that the defendants' finger-  
12 prints are not on the particular bomb, but that  
13 fingerprint man was presented by the Government  
14 and the Government has never contended that the  
15 fingerprints of William Marrapese and Nicholas  
16 Zinni were on that bomb. It would be very, very  
17 strange if they were.

18 You will recall in the gun conversation,  
19 William Marrapese said "We'll get someone down  
20 there." It's not Nicholas Zinni and William  
21 Marrapese that had that expertise to produce that  
22 bomb. In fact, when William Marrapese said "We've  
23 got eight sticks." "We've got eight sticks.",  
24 these are the managerial aspects of the conspiracy  
25 particularly William Marrapese, the managerial

1 [1611] aspects. Not the blue collar worker, so to  
2 speak, who actually goes out and makes up the  
3 bomb.

\* \* \*



17 [1265] Q All right. And what happened after you requested  
18 permission to enter?

19 A He was not allowed at first, and there was some  
20 discussion about my getting in. I can tell you what I said  
21 to the Agents. I said to them that I wanted to be admitted, and  
22 my sole purpose, my sole purpose was to find out if Daniel Lapolla  
23 was attending that wake, he, the Reverend Lapolla having been  
24 his brother, and I indicated to the officer, namely, Sal Petrella,  
25 that I sought the admission to the parlor for the purpose of

[1266] interviewing Mr. Lapolla, if he would be interviewed, and he  
2 could refuse me, and I told the officer if he would like to  
3 come in with me or the Agent and be present when I interviewed  
4 him or not be present, but that was my purpose. I was led into  
5 the funeral parlor at that point.

6 Q And what did you do after you entered the funeral  
7 parlor?

8 A I walked around the bier and I looked for the  
9 stature and build and so forth of Mr. Lapolla that was given  
10 to me by Mr. Marrapese, and without luck. The party that was  
11 described to me that would be Dan Lapolla was not in my view.

\* \* \*

12 [530] Q So is it fair to say that on your testimony  
13 this morning that you arrived at -- you say at Carter's  
14 Jewelry approximately twenty minutes of ten?

15 MR. COFFEY: That is not my mathematics,  
16 Your Honor.

17 THE COURT: Do you agree with those  
18 mathematics or not?

19 THE WITNESS: No, sir. I can't. I  
20 can only give an approximation when I arrived  
21 there.

22 BY MR. ZINNI:

23 Q I am asking you about twenty minutes of ten.

24 A I would say, roughly, about ten, thereabouts.

25 Q And did you testify before Mr. Justice Clarie

1 [531] and the jury that you would say that you eventually left  
2 Mr. Guillette's -- page 92.

3 THE COURT: That is not the way to  
4 do it, counsel. Were you asked this question  
5 and did you give this answer on a certain date.

6 MR. ZINNI: Thank you.

7 BY MR. ZINNI:

8 Q Mr. Witness, did you give -- were you asked  
9 this question: "At what time did you eventually leave  
10 Mr. Guillette's residence?"

11 "A I would say somewhere around --



12 around ten o'clock."

13 "Q And where did you go?"

14 "A I went to Carter's Jewelry."

15 "Q Where is that located, sir? On  
16 Reservoir Avenue in Cranston, Rhode Island?"

17 "A Correct."

18 Do you remember testifying to that?

19 A Yes, sir.

\* \* \*

16 [413] Q Yes. That is what we are asking for.  
17 Would it be, say, from ten to ten fifteen that you arrived  
18 in that particular area?

19 A Around ten o'clock, thereabouts. I --

\* \* \*

3 [338] Q Now, where did you go after getting into the  
4 front portion, if anywhere, of Carter's Jewelry Store that  
5 morning?

6 A Lou said "They're in the back."

7 MR. ZINNI: I pray that be stricken,  
8 if Your Honor please.

9 THE COURT: Granted.

10 BY MR. COFFEY:

11 Q Where did you go?

12 A We traveled into the back portion of the building  
13 where I had been there previously, as I previously  
14 described.

15 Q And did you go into the back room?

16 A I did.

17 Q With whom were you with at that time as you  
18 were going into the back room?

19 A Mr. Guillette.

20 Q When you got there, was anybody else already  
21 in the room?

22 A Yes, sir.

23 Q Who?

24 A Mr. Marrapese, Mr. Zinni, Andrew Bucci,  
25 Bobby Joost, Guillette and myself.

\* \* \*

5 [345] Q Now, at this point, how long had this conver-  
6 sation taken? How long had it taken place in terms of  
7 minutes?

\* \* \*

17 [414] Q And how long did that meeting take place?  
18 How long did it take?

19 A Say roughly fifteen minutes, thereabouts.

20 Q Fifteen minutes. Could it be a half an hour?

21 A No. I don't think it was a half an hour.

22 Q Could it be twenty minutes?

23 A Fifteen minutes, thereabouts. It wasn't very  
24 long.

\* \* \*



3 [347] Q Where did you go in Woonsocket?

4 A To Eddie Sitko's residence.

5 Q Do you know where that is located?

6 A I believe it's on Maple Street -- I'm not  
7 sure -- in Woonsocket.

8 Q Did you, in fact, meet with Mr. Sitko?

9 A We did.

10 Q Who was present?

11 A Mr. Guillette, myself, Mr. Sitko.

12 Q What transpired at that meeting?

13 A Mr. Sitko gave Mr. Guillette a gun and, in turn,  
14 Mr. Guillette gave me the gun.

15 Q What was the gun for?

16 A To kill Daniel LaPolla.

17 Q What type of gun was it?

18 A It was a .32 Colt automatic.

19 Q Mr. Housand, did you kill Daniel LaPolla?

20 A No, sir.

21 Q On September 29, 1972, where were you?

22 A I was in the Wade County Jail, Raleigh,  
23 North Carolina.

24 Q How long had you been incarcerated up to that  
25 time, September 29th?

A Since July.

\* \* \*

1 [365] examination also some of the crimes that you participated  
2 in while you were in Rhode Island. You told us about this  
3 fellow Daniels and Laneaux and yourself going out through  
4 Rhode Island and Connecticut and passing these -- wasn't  
5 it American Express Money Orders?  
6

7 MR. COFFEY: Objection as to form,  
8 Your Honor.

9 THE COURT: Yes. There were a number  
10 of questions combined.

11 BY MR. DANIELS:

12 Q Did you testify to the passing of American  
13 Express Money Orders?

14 A I testified to passing money orders, yes.

15 Q Were they American Express?

16 A If I recall, yes, they were.

17 Q Was it you, Daniels, Laneaux and Sitko?

A Yes.

\* \* \*

5 [371] Q All right. My original question was: Now,  
6 you are being told that you will not be prosecuted for  
7 the check cashing scheme nor for the burglary in  
8 Rhode Island, the possession of burglar tools?  
9

10 A The possession of burglar tools was dismissed.

11 Q In any event, you were told you were not going  
to be prosecuted for Rhode Island crimes?



12 A You're right.

13 Q Now, how about back on May the 10th, the 11th  
14 and the 12th, three days after this May 8th meeting, didn't  
15 the F.B.I. tell you that unless you gave them information  
16 concerning Joost and Guillette that you would be  
17 prosecuted for the check cashing scheme, to wit, the  
18 inter-state transportation of stolen American Express  
19 Money Orders as well as a conspiracy charge? Didn't they  
20 tell you that at that time, three days -- two, three  
21 and four days after the May 8th meeting?

22 A Yes, sir. They told me this.

23 Q I see. So, naturally, you told them about the  
24 activities of Joost and Guillette, criminal activities,  
25 did you not?

1 [372] A I did. What I knew.

2 Q What you knew. You told them about the check  
3 cashing; right?

4 A They knew about this.

5 Q You gave them information about it; right?

6 A I did.

7 Q You involved yourself in it; right?

8 A I did.

9 Q You told them about this possession of burglar  
10 tools and you involved yourself in that as well as Joost  
11 and Guillette, did you not?

12

A That was a matter of record.

13

14

Q Did you or did you not tell them certain information and involve yourself in that --

15

A Yes. I told them.

16

17

18

19

Q All right. So, naturally, at that time, telling them what you knew personally about these individuals two days after the May 8th meeting, you told them about the May 8th meeting, didn't you?

20

A I did not.

21

22

23

24

25

Q You did not. You didn't tell anyone on May the 10th even though you were threatened with prosecution for the inter-state transportation of stolen checks, for the possession of burglar tools, you didn't tell them on the 10th, the 11th or the 12th or at any time

1 [373] until eleven months later when you were in custody; isn't that right, Mr. Housand?

2

3

4

MR. COFFEY: Objection, Your Honor, as to form.

5

6

7

THE COURT: No. I think it's all right if you understand it. Is that a fair summary?

8

9

THE WITNESS: I talked with Federal Agents concerning the LaPolla matter first in



April of 1973.

BY MR. DANIELS:

Q All right. And the answer to my question is "Yes", is that correct?

A Yes.

Q You are qualifying it with that last answer?

A That is true.

\* \* \*

[445] A I blamed David Guillette for that?

Q Yes. You blamed David Guillette for the beating that you received by Ricky Cochran, the husband of Ida Cochran?

A David ordered a beating, yes.

Q You blamed him for that?

A Certainly.

Q And with this beating, this was a severe beating, you received three broken ribs and a fractured face and ended up in the hospital, didn't you?

A That is true.

Q And when you were in the hospital, this would be, I believe, April the 24th, -- strike that. -- May 24, 1972?

A 23 I believe was the correct date.

Q 23. That is 15 days after this meeting you say occurred on May 8th, 1972 at Carter's Jewelry?

A Yes, sir.

19 Q And at that time you were angry, were you not,  
20 at Mr. Guillette?

21 A Yes.

22 Q And you were visited by F.B.I. agents Davis  
23 and Bubella?

24 A Bubella is the only one I recall.

25 Q F. B. I. Agent Bubella. You expressed your

1  
2 [446] anger to Mr. Bubella, did you not?

3 A I did.

4 Q At that time you were being requested by them  
5 to cooperate with them and to tell them anything you knew  
6 about the activities of Guillette and Joost; isn't that  
7 correct?

8 MR. COFFEY: Objection, Your Honor.

9 It's hearsay, what he was being requested by others.

10 THE COURT: No. I think it's quite  
11 proper. Were you requested by them to cooperate  
12 with regard to your dealings with Guillette and  
13 Joost?

14 THE WITNESS: Yes, Your Honor.

15 BY MR. DANIELS:

16 Q As a matter of fact, they told you that if  
17 you did not cooperate that they were going to prosecute  
18 you on the federal charge of the inter-state transporta-  
tion of stolen checks and that you were to be prosecuted



19 for conspiracy and for the possession of burglar tools;  
20 is that right?

21 A That is true.

22 Q Now, at that time, Mr. Housand, fifteen days  
23 after the May 8th meeting where you say Guillette and  
24 Joost were present and where you were angry suffering a  
25 severe beating, did you tell F.B.I. Agent Bubella about

1 [447] this May 8th, 1972 meeting at Carter's Jewelry?  
2

3 A No, sir.

4 Q You didn't tell the Lincoln Police on  
5 May 10th, 11th or 12th or the F.B.I. on May 11th?

6 THE COURT: I think you covered  
7 that yesterday.

8 MR. DANIELS: All right.

9 Q The first time that you mentioned anything  
10 about this meeting to Federal Agents was when the officers  
11 Fowler and Watterson came to see you when you were incar-  
12 cerated in North Carolina in 1973; isn't that right?

13 A That is correct.

14 Q And you gave them a statement at that time,  
15 did you not, the April 18, 1973 statement?

16 A I did.

17 Q Now, I direct your attention to the last page  
18 of the statement, last paragraph, that states:

"I have read the above statement

19 consisting of 8 pages which I have signed. I  
20 have had the opportunity to make changes, and I  
21 swear the above statement is true and correct."  
22 Signed "John A. Housand. Subscribed and sworn  
23 to before me this 19th day of April, 1973."

24 Signed "Earl J. Fowler and James J. Watterson."

25 Is that what that states?

1  
[448] A Yes, sir.

2  
3 Q Mr. Housand, will you show me anywhere in that  
4 statement where you make any reference to any meeting at  
5 Carter's Jewelry Store on May the 8th, 1972?

6 A No, sir.

7 Q There is nothing in that statement, is there?

A No, sir. There isn't.

\* \* \*

18 [359] Q Now, going back to the first time eleven months  
19 after May 8th, this meeting you testified to, May 8th,  
20 1972, eleven months later in April of 1973, you first told  
21 the Federal Officers about that, you had already served  
22 the better part of eight years in prison and you had just  
23 been sentenced to six years on that present charge; isn't  
24 that correct?

25 A That is true.



1 [360] Q So you wanted out of jail very badly at that  
2 time, did you not?  
3

4 A Everyone wants out of jail.

5 Q No. My question was, you.

6 A Certainly.

7 Q Everyone doesn't serve eight years, just  
8 receiving six more. You wanted out of jail very badly,  
9 did you not, Mr. Housand?

10 THE COURT: He just said "Yes".

THE WITNESS: I said "Yes."

\* \* \*

5 [453] Q And in the engagement of this criminal activity,  
6 you found it necessary to lie, didn't you?  
7

8 A Yes, sir.

9 Q And in fact, I think you testified yesterday,  
10 did you not, that you indulged in forgery?

11 A I did.

12 Q Larceny --

13 A Yes, sir.

14 Q -- burglary?

15 A Yes, sir.

16 Q And from 1965 on up to at least April 18th of  
17 1973, you found it necessary to lie in indulging in your  
18 criminal activities; isn't that correct?

A That is correct.

\* \* \*

12 [550] Q Now, in response to some questions by, I  
13 believe, Mr. Zinni, you indicated that there was a period  
14 of time when lying was more or less a practice by you;  
15 would that be correct?

16 A I beg your pardon?

17 Q Lying was a practice by you, something you  
18 engaged in?

19 A Oh, yes, sir.

20 Q Were these related to the forgeries and  
21 larcenies which you were associated in in the 1960's?

22 A Yes, sir.

\* \* \*

3 [355] Q Forgery, that type of thing?

4 A Yes, sir.

5 Q Fraud, misrepresentation, that type of crime?

6 A That among other things, yes.

7 Q Yes. Now, from 1968, the three year conviction  
8 for forgery and escape you served in the Nebraska  
9 Correctional and Penal Complex, you were eventually  
10 released and engaged in criminal activities, you were  
11 again arrested and convicted in 1971; isn't that right?

12 A Yes. I believe it was 1971.

13 Q You were using the name at that time of  
14 Stephen Longvall, were you not?

15 A Yes, sir.

16 Q So we have John Smith, Charles Kirby,



17 John Joseph Howard, Stephen Longvall and Marvin Dunkle;  
18 is that it?

19 A Yes, sir.

\* \* \*

17 [448] Q You do know Andrew Bucci?

18 A I do.

19 Q You do know him as an attorney licensed to  
20 practice in the State of Rhode Island?

21 A Yes.

22 Q In fact, he was your attorney at one time?

23 A Yes, sir.

24 Q Now, you testified yesterday that this attorney  
25 Andrew Bucci was actually present at the May 8th meeting,

1 [449] 1972 at Carter's Jewelry in Providence where you were  
2 asked to kill LaPolla for \$5000; is that your testimony?

3 A That is correct.

4 Q Now, you testified in the Grand Jury on  
5 May the 2nd, 1973 for 50 pages, did you not?

6 A I did.

7 Q And did you tell the Grand Jury and the  
8 United States Attorney asking the questions -- did you  
9 make any mention at all that Andrew Bucci was at that  
10 meeting on May 8th, 1972 at Carter's Jewelry?

11 A I did not.

\* \* \*

1 || [364] was told this.

2 Q When?

3 A Oh, sometime after I arrived in Connecticut.

4 Q Right. By Mr. Coffey --

5 A Yes, sir.

6 Q -- a representative of the United States  
7 Attorney's Office; correct?

8 A He said that he would attempt to appear in my  
9 behalf.

10 Q He also told you he did appear, didn't he?

11 A Subsequently he did.

12 Q And you are on parole; isn't that right?

13 A Yes, sir. I made parole.

14 Q Now, in addition to that, you were also promised  
15 immunity for any participation which you say you had in  
16 this LaPolla case; is that right?

17 A Yes, sir.

18 Q And you were also promised immunity for any  
19 crimes that you may have committed while you were in the  
20 State of Rhode Island, didn't you testify to a short time  
21 ago on direct examination?

22 A Yes, sir.

23 Q Who promised you that?

24 A Mr. Coffey's office.

25 Q Mr. Coffey. Now, you testified on direct

\* \* \*



1 [374] Q Of course, you don't pay any rent and you don't  
2 pay for your food and you don't pay for your clothing?

3 A Oh, no.

4 Q So when you received this Thousand Dollars, this  
5 was above and beyond what was being furnished to you by  
6 the prison authorities; isn't that right?

7 A Yes.

8 Q They bought you cigarettes, they gave you money  
9 for shaving articles and all the toilet articles and  
10 anything else your heart desired up to \$85.00 a month  
11 above any subsistence of food and clothing and shelter;  
12 isn't that right?

13 A Yes. It was approximately that.

14 Q You had a running account at the commissary,  
15 did you not?

16 A Yes.

17 Q Agent Petrella gave you some of this money in  
18 cash, did he not?

19 A I believe some of it was in cash, yes.

\* \* \*

5 [375] Q You were paroled in April of 1974. You  
6 testified you received an additional \$2160.00?

7 A Yes, sir.

8 Q All in all you have received in excess of  
9 \$3000.00; is that correct?

10 A Yes, sir.

11 Q The suit that you have on --

12 A Yes, sir.

13 Q -- the clothing, the shoes, the tie, the  
14 shirt, the boots or whatever it is you are wearing; is  
15 that right?

16 A Yes, sir.

\* \* \*

2 [1031] THE COURT: My question was: Would  
3 you, please, ask your witnesses to excuse themselves  
4 or himself or herself?

5 MR. DANIELS: Mr. Longo, Judge McKiernan,  
6 Mr. Rocheleau, Attorney Rao, would you all, please  
7 step out?

8 (At this time the above named persons  
9 left the court room.)

\* \* \*

[1085] Q Is it Justice McKiernan?

20 A That is correct.

21 Q And what is your official professional capacity,  
22 sir?

23 A I am a member of the Superior Court of the  
24 State of Rhode Island, Court of General Jurisdiction.

25 Q As a Justice of the Superior Court --



1 [1086] A Associate Justice.

2 Q How long have you been an Associate Justice?

3 A Since 1956.

4 Q And prior to that time, sir, did you have --

5 A I was Lieutenant Governor for the State of  
6 Rhode Island for a period of ten years.

7 Q Lieutenant Governor?

8 A Lieutenant Governor.

9 Q Now, do you recall the case of State versus  
10 Robert Jorgi?

11 A Yes.

12 Q Do you recall any events concerning an in-chamber  
13 conference?

14 A I remember it very well. On May 8th, 1972  
15 several indictments were forwarded to me by the Judge who  
16 handled the criminal calendar, Judge MacKenzie, and there  
17 were five or six defendants named in the indictments, and  
18 I had an in-chambers conference with the lawyers involved.  
19 I believe those lawyers were Kelly, Sheehan, Bucci,  
20 Rao, O'Neill, and I believe Mr. Mulligan of the Attorney  
21 General's Department.

\* \* \*

10 [1094] Q If Your Honor please, Mr. Justice, I think you  
11 testified that you try to start all of your trials at  
12 10:00 o'clock, your jury trials at 10:00 o'clock?

13 A The earliest we start a jury trial would be

14 10:00 o'clock.

15 Q On that morning, did you follow that procedure?

16 A I doubt it because I believe that was the  
17 morning of a new jury panel, and when we have a new jury  
18 panel, they have to be qualified and before we can get  
19 a specific panel. We don't get a specific panel until  
20 10:30 or quarter of 11:00.

21 Q Would it be fair to say that the conference  
22 that you held with all of these attorneys was between  
23 nine and ten in the morning?

24 A I would say not. I would say it would be  
25 around ten o'clock.

1 [1095] Q Around ten o'clock?

2 A Yes.

3 THE COURT: You mean it started or  
4 ended?

5 THE WITNESS: Started.

6 BY MR. ZINNI:

7 Q And these attorneys all engaged in conference  
8 with you, did they?

9 A Yes, sir. Just a question of which case we  
10 were going to try. Five or six indictments involving the  
11 named defendants. They had been sent down to me. Five  
12 or six attorneys, and the question was which one we were  
13 going to try, and Mr. Mulligan was ready on all of them.

\* \* \*



1 [1241] Q What time did you arrive at the Providence Superior  
2 Courthouse on Monday, May the 8th, 1972?

3 A My best recollection, Mr. Daniels, is just prior  
4 to 10:00.

5 Q And what did you do after you arrived?

6 A I went directly to the chambers of Mr. Justice  
7 McKiernan.

8 Q And what occurred at that time, sir?

9 A At that time we were joined by another attorney,  
10 John Kelly, and in turn, Mr. Rao.

11 Q That is Carmen Rao?

12 A Carmen Rao, and the prosecutor, Mr. Mulligan,  
13 and the last of the people to arrive was John Sheehan, another  
14 attorney. Prior, however, to Mr. Rao's arrival, we had walked  
15 into the Judge's chambers.

\* \* \*

5 [1242] Q When you arrived, did you go into the chambers?

6 A I did.

7 Q Who was there at the time?

8 A John O'Neill, myself, and I believe Kelly had  
9 arrived, John Kelly.

10 Q And what occurred at that time and place?

11 A Walked into the chambers, however, the prosecutor  
12 was not in the chambers and the Judge would not address us under  
13 any circumstances until the prosecutor arrived.

14 Q So what happened then?

15           A           Walked out of the chambers. That's when Mr. Rao  
16 appeared and Ed Mulligan.

17           Q           Mr. Mulligan is the prosecutor you people were  
18 waiting for?

19           A           That is correct.

20           Q           What happened then?

21           A           Walked back into the chamber. As I say, John  
22 Sheehan had not yet arrived. He arrived later. And we sat  
23 down in order to discuss the case.

24           Q           At approximately what time did you enter the  
25 Judge's chambers the first time?

1243

.1       [1243] A           Sometime shortly before 10:00.

2           Q           And what time approximately did you enter the  
3 Judge's chambers the second time with the prosecutor and the  
4 other attorneys?

5           A           My best approximation is about 10:15, Mr. Daniels.

6           Q           What occurred after you entered the Judge's  
7 chambers with the other attorneys?

8           A           Well, we began discussing these several indictments  
9 and the problem was that Mr. Mulligan had forgotten to take  
10 his private files from the downstairs office of the Attorney  
11 General which is on the fourth floor. Judge McKiernan's chamber  
12 is on the fifth, and he went out temporarily to get his files



13 and he came back. Of course, there was no discussion of the  
14 case until Mr. Mulligan returned, and I would say roughly he  
15 was gone five or ten minutes. When he reappeared in chambers  
16 with his files --

17 Q And what occurred after that, sir?

18 A Well, then a discussion ensued with regard to the  
19 cases proceeding to trial.

20 Now, if Your Honor please, I am aware of hearsay. Do you  
21 want me to --

22 Q No. Don't discuss any hearsay.

23 A All right. There was some discussion about what  
24 cases will proceed to trial.

25 Q Was there any mention at that time about your

[1244] desire to make a motion before the Court?

2 A There was.

3 Q And what type of motion did you want to make at  
4 that time?

5 A The motion was aimed at a continuance of the  
6 cases in Providence on May 8th from its posture for trial to  
7 picking another day certain for trial because of the attendant  
8 publicity that the gun case got in Rhode Island just prior to  
9 the time that that case would proceed, meaning that it had  
10 such a saturation of advertisement in the paper that it would  
11 be prejudicial to proceeding with the trial at that time with

12 those two defendants.

13 Q Which two defendants did this concern?

14 A Marrapese and Zinni in that case.

\* \* \*

19 [1103] Q What time did you get to court that morning  
20 in Superior Court?

21 A Around ten o'clock, sir. Ten, ten fifteen.

22 Q And when you arrived there, did you see the  
23 defendant, Zinni, in the corridor?

24 A I think I did. I'm not absolutely sure, but  
25 I believe I did.

1 [1104] Q And did you have any conversation with  
2 Mr. Zinni?

3 A I may have, sir, but I couldn't say specifically.

4 Q And do you know the time that the conference  
5 started in the Judge's chambers?

6 A I would say around 10:15. Between 10:15 and  
7 10, 10:30, approximately.

8 MR. ZINNI: Thank you. I have no  
9 further questions.

10 THE COURT: Cross?

11 CROSS EXAMINATION

12 BY MR. COFFEY:

13 Q Mr. Kelly, what time was it that you arrived  
14 at the Superior Court on May 8th?

15 A Around ten o'clock, I would say, sir.

\* \* \*



1 [1105] Q Was Mr. Bucci already there when you arrived?

2 A Yes. I think he was.

3 Q Was Mr. O'Neill?

4 A Yes.

\* \* \*

8 [1125] Q What time did you arrive at Justice McKiernan's  
9 court room that morning?

10 A To the best of my recollection, it was  
11 sometime between 10:10 and 10:15. Around that general  
12 area. I know I had been in another court room previously.

13 Q What court room had you been in previously?

14 A To the best of my knowledge, Justice McKenzie,  
15 who called the criminal calendar.

16 Q And after you arrived in the court room of  
17 Justice McKiernan ---

18 THE COURT: In the chambers, I think  
19 he said.

20 THE WITNESS: Yes, Your Honor.

21 BY MR. DANIELS:

22 Q Did you go through the court before you went  
23 to the chambers?

24 A Pardon?

25 Q Did you go into the court room before you  
entered the chambers?

1 [1126] A No. I went through his ante-chamber so-called  
2 or waiting room. I don't think I physically went in his  
3 court room. I am not sure.

4 Q You went directly into the chambers?

5 A Yes. I did.

6 Q Was anyone present at the time you arrived?

7 A Well, there were a group of attorneys there.  
8 There was Edward Mulligan, Special Assistant Attorney  
9 General, there was Andrew Bucci, Carmen Rao, I believe  
10 there was Mr. Zinni from Boston, Thomas Zinni, there was  
11 Attorney Jack Kelly, John Kelly and myself.

\* \* \*

9 [1024] Q What time did you arrive in Judge McKiernan's  
10 court room?

11 A I think it was around ten minutes or so after  
12 10:00 A.M.

\* \* \*

4 [1048] Q During the period 10:10 to approximately  
5 11:30 on the morning of May 8th, did you see Andrew Bucci  
6 at any time?

7 A Just when I did see him which would have  
8 been when he came out of Judge McKiernan's chambers which  
9 would have been -- just a guess, probably ten to  
10 fifteen minutes before this 11:35 A.M. when we started.

\* \* \*



6 [1025] Q At sometime during that morning, did someone  
7 exit from the Judge's chambers?

8 A Yes.

9 Q Who exited from the Judge's chambers?

10 A I saw Carmen Rao.

11 Q That is the attorney?

12 A An attorney. Edward Mulligan, attorney, and  
13 Andrew Bucci.

14 Q Did Mr. Mulligan have any function concerning  
15 this particular trial?

16 A He was the Prosecutor.

17 Q And you mentioned Andrew Bucci.

18 A Yes. I'm pretty sure I saw Andrew Bucci.

19 Q Now, did you observe these people exit from  
20 the Judge's chambers?

21 THE COURT: He just said he saw three  
22 people, Rao, Mulligan and Bucci come out of the  
23 Judge's chambers.

24 BY MR. DANIELS:

25 Q Approximately, how long was this after you  
first arrived in Judge McKiernan's court room at ten

[1026] minutes past ten?

2 A It was quite some time afterwards.

3 THE COURT: Can you approximate the time  
4 afterwards?

5 THE WITNESS: It could have been

6 45 minutes to an hour, possibly. Exactly I  
7 don't recall.

8 THE COURT: Thank you.

9 BY MR. DANIELS:

10 Q What is your best estimate?

11 THE COURT: He just said between 45 minutes  
12 and an hour.

\* \* \*

10 [1127] Q How long did the conference last?

11 A To the best of my recollection, we left there  
12 between 11:15 and 11:30 because the reason I say this  
13 --

13 MR. COFFEY: Objection.

14 THE COURT: No. They didn't ask you  
15 that.

16 THE WITNESS: Excuse me, Your Honor.

17 THE COURT: 11:15 to 11:30?

18 THE WITNESS: Yes, Your Honor.

\* \* \*

5 [1105] Q I see. When the conference broke up, you  
6 don't know what the specific time was, do you?  
7

8 A Not the specific minute. I think it was  
around after 11:00 o'clock. Around that time.

\* \* \*



15 [1254] Q Did you see William Marrapese at the Courthouse  
16 on May the 8th, 1972?

17 A Yes. I did.

18 Q And at what location?

19 A In the Court chamber -- open Court.

20 Q In open Court. And can you tell us when during  
21 the Court proceedings you observed him there?

22 A It was after we had left the chamber of Judge  
23 McKiernan, the inner chamber, where we had been from 10:15 to  
24 quarter of eleven, 11:00, so it must have been around quarter  
25 to eleven, 11:00.

1 [1255] Q And did you see Nicholas Zinni at the Court that  
2 day?

3 A Yes. I did.

4 Q Where did you observe him?

5 A At the same location.

6 Q And approximately what time?

7 A Approximately the same time. At the same time.  
8 Not approximately.

\* \* \*

3 [1068] Q Now, I would direct your attention to the  
4 morning of May the 8th, 1972. Did you go with any  
5 particular court room that morning?

6 A Yes. I did.

7 Q And prior to going to the court room, where  
were you?

8 A I was in my office which is on the fourth floor.

9 Q Which court room did you go to?

10 A I don't know the number. I think it's court  
11 room number 10 that I was summoned up there by the Judge  
12 by telephone.

13 Q By which Judge?

14 A Judge McKiernan.

15 Q And after arriving in court, did you take down  
16 any statements by any persons within the court?

17 A Yes, sir. I did.

18 Q And did you make notes, stenographic notes,  
19 as you were taking down the statements or the testimony?

20 A Yes, sir. I did.

21 Q Have you had occasion to prepare a transcript  
22 of the proceedings which took place that morning from your  
23 notes?

24 A Yes, sir. I have.

\* \* \*

7 [1249] Q Have you refreshed your recollection as to the  
8 persons who spoke as contained within the document?

9 A May I look at it once more, please?

10 Q (Hands document)

11 A Yes. It has refreshed my recollection.

12 Q How many persons were speaking?

13 A Mr. O'Neill, Mr. Mulligan, Mr. Rao, the Court



14 and myself.

15 Q That would be Judge McKiernan?

16 A It says "The Court" here, but that was Judge  
17 McKiernan.

18 Q How long was it between the time that you first  
19 exited from the Judge's chambers after the conference until  
20 you began to speak on this motion made by the prosecutor, Mr.  
21 Mulligan?

22 A It was few minutes, Mr. Daniels. I don't know  
23 exactly what the Judge may have been doing in his chambers,  
24 but it was a few minutes interval from the time we left the  
25 inner chambers to Open Court, whatever that time is, Mr. Daniels.

( [1250] I couldn't help you.

2 Q How long did the motion take?

3 A Minutes. Five. Not lengthy.

4 Q And after the motion, what occurred?

5 A Then the case that was selected for trial was  
6 called, and it happens that it was the trial of one, Robert  
7 Jorgi, and the attorney on that particular case was Carmen Rao.

\* \* \*

5 [1248] THE WITNESS: Yes. I'm sorry. The document,  
6 Defendants' R refreshes my recollection.

7 THE COURT: Now, having it refreshed, what  
8 is your recollection?  
9

THE WITNESS: I recollect now is that Mr.

Mulligan, the prosecutor, himself made the motion with regard to postponing a portion of the defendants' trials to May 22nd.

BY MR. DANIELS:

Q And which defendants were concerned with that motion?

A Marsiglio, Zinni, Page, Marrapese.

Q And does there appear some statements by you contained within Defendants' R?

A There are.

Q And who else is talking at the time of the motion?

A Mr. O'Neill.

\* \* \*

25 || [1073] Q All right. How long did this motion to continue

1 ||  
[1074] take from the time the first words were spoken until the  
2 || Court ruled?

3 || A I would estimate ten minutes.

\* \* \*

7 || [1084] Q Without telling us what he said, did you hear  
8 || Mr. Bucci speak on the motion?

9 || A Yes, sir. I did.

\* \* \*

24 || Q The words that you heard Mr. Bucci speak while  
25 || the motion for continuance was being made, are they



[1085] 1 || contained in Defendants' Exhibits R and S?

2 || A. Yes, sir. They are.

\* \* \*

3 [1071] Q Immediately following the making of this  
4 motion for a continuance, did something occur?

5 A May I refresh my recollection, please?  
6 Immediately after the motion was made and granted, the  
7 Judge took a short recess so that we could get a jury  
8 panel empaneled on the case that we were about to start.

9 Q Was that State versus Robert Jorgi?

10 A Yes. It is.

11 Q And did you take down the testimony during  
12 the Jorgi trial?

13 A Yes. I did.

14 Q Were you present when they began to select a  
15 jury?

16 A Yes. I was.

17 Q Did you take this down in your notes also?

18 A Yes, sir. I did.

19 Q All right. Now, how long before the jury  
20 selection process began was the recess taken?

A I would say five minutes.

\* \* \*

8 [1250] Q Between the completion of the motion and the  
9 Judge's ruling and the beginning of the trial, the selection  
10 of the jury, was there any time lapse?

11 A There was a recess, Mr. Daniels.

12 Q How long was the recess?

13 A Again, I am not sure. It might have been minutes  
14 because I left that chamber -- I'm sorry. Minutes.

15 Q What did you do during that recess?

16 A I left that chamber to attend to another matter  
17 before another Judge on the same floor of the same Courthouse,  
18 and that particular thing that I had to do took minutes.

19 Q What did you do?

20 A I withdrew an appearance on behalf of a particular  
21 person.

22 Q Who was that person?

23 A James Harris.

24 Q Now, in order to do that, to withdraw your  
25 appearance for James Harris, did that require the approval of

[1251] some Judge?

2 A Yes.

3 Q Which Judge?

4 A It was Judge McKenzie at that time. It was Judge  
5 McKenzie.

6 Q Was he in a different Courtroom than Judge  
7 McKiernan?

8 A Yes. Geographically, maybe one hundred fifty  
9 feet down one corridor and one hundred fifty feet down the  
10 other. About 300 feet away, walking.

11 Q Did this require his personal approval?

12 A Yes.



13 Q Did you speak with him directly?

14 A Yes.

15 Q And he gave his approval for the withdrawal?

16 A Yes.

17 MR. COFFEY: Objection. That is hearsay.

18 THE WITNESS: Well, I'm -- yes.

19 BY MR. DANIELS:

20 Q What occurred next, sir?

21 A I walked back to the Courtroom where the Jorgi  
22 matter was about to start.

23 Q What were the first proceedings for the State  
24 versus Jorgi trial?

25 A Well, the case had to be called. Is that what

[1252] you mean?

2 Q Yes.

3 A The case was called, and there was a jury selection  
4 process, and in that particular case, the process took a very  
5 short period of time. Do you want me to continue or --

6 Q Where were you when the jury selection process  
7 began?

8 A In that Courtroom.

9 Q And any particular location?

10 A Yes.

11 MR. COFFEY: Any other answer would be  
12 unresponsive.

13 BY MR. DANIELS:

14 Q At what location?

15 A Well, taking this Courtroom as an example, when  
16 the jury panel entered, took the seats in the rear of the  
17 Courtroom, they occupied the whole area. Judge McKiernan's  
18 chamber is small.

19 Q Chamber or Courtroom?

20 A Courtroom. It's a small Courtroom and the jury  
21 would sit on one side such as this, but there is also another  
22 jury panel arrangement on the other side, and I took a seat  
23 on the opposite side where the jury would commence being selected  
24 and that would be next to defense counsel table.

\* \* \*

25 || [1112] Q Did you see Mr. Bucci on the morning of

1 ||  
2 [1113] May 8th at any other time other than within the in-chamber  
3 conference?

4 A Yes, sir.

5 Q When did you see him?

6 THE COURT: He just said he saw him  
7 in court. Did you not just say that a little  
8 while ago?

9 THE WITNESS: Yes, Your Honor.

10 BY MR. DANIELS:

Q That was during the motion to pass?



11

A Yes, sir.

12

Q Any other time?

13

A Yes, sir.

14

Q Would you tell us when? .

15

A Just before I began to either empanel the jury  
or just before Judge McKiernan called for a jury  
Mr. Bucci was still in the court room, and this would  
have been following the motion that we just referred to.

19

Q Where was he located --

20

A My recollection -- excuse me.

21

Q Where was he located within the court room  
at this time?

23

A To my left, as I recall, in a jury box chair  
to the left of counsel table, sometimes used for a jury  
box. It was not used for the jury box in this particular

24

25

[1114] / || trial.

11

\* \* \*  
Q Mr. Fuina, how long have you been a member of  
the Providence Police Department?

12

13

A My twentieth year.

5

\* \* \*  
[1040] Q And incidentally, were you named Policeman  
Of The Year last year?

6

7

MR. COFFEY: Objection, Your Honor.

8

THE COURT: Named by whom?

9

MR. ZINNI: Providence Police.

THE WITNESS: The year before last.

BY MR. ZINNI:

Q 1972?

A Yes, sir.

Q And what was that award, please?

A Policeman Of The Year.

\* \* \*

[1035] Q Where were you seated during this period of time, sir?

A Next to Edward Mulligan, the Prosecutor.. To his left facing the Judge.

Q You would be seated as Officer Petrella is seated next to Mr. Coffey, the Prosecutor?

A Yes.

Q This was your case then; is that correct?

A Yes.

Q During the -- strike that.

Did you record on Defendants' Exhibit Q the time when the jury selection process began?

THE COURT: He said he recorded two times, one when they began and two when they ended, did you not?

THE WITNESS: Yes, sir.

BY MR. DANIELS:

Q What time did you record that the jury selection



19 process began?

20 A 11:35 A.M.

21 Q What time did you record that the jury selection  
22 process ended?

23 A 11:52 A.M.

24 Q At either of these two times, did you observe  
25 the attorney, Andrew Bucci?

1 [1036] A Yes.

2 Q When?

3 A When we started.

4 Q And the time would be 11:35?

5 A Yes, sir.

6 Q Where was Mr. Bucci at that time?

7 A Sitting at counsel for the defense's table.

8 Q Now, Mr. Jorgi, the defendant, was he  
9 represented by an attorney at that time?

10 A Yes, sir. He was.

11 Q By whom?

12 A Carmen Rao.

13 Q Where was Mr. Bucci seated in relation to the  
14 attorney, Carmen Rao?

15 A As I recall it, in the approximate position  
16 where Mr. Zinni is sitting now.

17 Q Thomas Zinni?

18 A No. Nicholas Zinni.

\* \* \*

1  
2 [1045] A Well, when the request was made, I couldn't  
3 remember dates or times and when I pulled the case out  
4 for that date, I saw this in with the case which I  
5 wouldn't -- and so I brought them with me.

6 MR. COFFEY: I see. I have no  
7 objection, Your Honor.

8 THE COURT: Q received.

9 (Three pages-notes-jury list received  
and marked Defendants' Exhibit Q.)

\* \* \*

1  
2 [1049] Q Now, is it your testimony that after the  
3 jury was picked on May 8th you did not see Andrew Bucci  
4 again?

5 A I don't recall seeing him. I was engrossed in  
6 the beginning of the trial and the parts to be played  
7 thereafter.

8 Q Do you recall seeing him -- do you have any  
9 specific recollection on seeing him leave the court room?

10 A I remember him leaving because I remember  
11 someone came in to the court room and said -- I don't  
12 remember who it was because I saw it out of the corner  
13 of my eye, and then I turned and saw Mr. Bucci stand up  
14 and he excused himself, and I don't remember whether it  
15 was to Mr. Rao or to whom, or the Judge, but I remember  
16 him leaving, and then I became engrossed in what I was  
doing, but I remember him leaving.



17 Q Yes. And did you see Andrew Bucci back in  
18 the court room after he departed?  
19

20 A No. Never again for the rest of the day.

21 Q Can you recall today who that individual was  
22 who came in and whispered to Mr. Bucci?

23 A No. I cannot.

24 MR. COFFEY: Thank you.

25 THE COURT: Any other questions?

\* \* \*

3 [1050] Q At what point did this individual come in  
4 and whisper to Mr. Bucci?

5 A I don't remember. I remember it was during  
6 -- it could have been when the witness was on the stand.

7 THE COURT: The question is: What  
8 is your best recollection when it was?

9 THE WITNESS: Exactly, I cannot recall.

10 BY MR. DANIELS:

11 Q In relation to the court proceedings, was it  
12 before the jury selections started or afterwards?

13 A I think it was after jury selection.

14 Q Was completed or started?

15 A Was completed, I think, I can't be sure. It's  
16 been some time.

17 Q The jury selection was completed, you said,  
18 11:52?

19 A 11:52 A.M.

\* \* \*

1 [1254] Q What was your purpose in remaining there until the  
2 noon recess?

3 A Well, it was two fold, Mr. Daniels. I had cleared  
4 my trials for that day assuming to go to trial on the case that  
5 I was there for, and I had cleared my other Court calendar for  
6 that day. And secondly, it was close to lunch when that process  
7 began, and I waited for Mr. Rao to have lunch with him. I can  
8 tell you why, but it wouldn't be responsive.

\* \* \*

21 [1102] Q Now, at any time on that morning, did you  
22 observe the defendant, William Marrapese?

23 A I recall that he was in the corridor, and  
24 that's all I recall, that he was in the corridor.

25 Q Do you recall whether this was before you went

1 [1103] into chambers for the conference or afterwards?

2 A After.

3 Q Do you recall how long it was after you left  
4 the conference?

5 A I believe immediately coming out of the  
6 conference, he was outside in the corridor, and I sat  
7 down with Mr. Marsiglio and he was there at that time,  
8 as best I recall.

9 Q Do you recall anyone else associated with the  
10 case in the corridor at that time and place?

11 A Mr. Rao, Mr. Bucci and Mr. O'Neill.

12 Q Any defendants other than Marrapese and  
13 Marsiglio, is it?

14 A Marsiglio and, I believe, Mr. Zinni was there.

\* \* \*



18 [1143] Q Did you see William Marrapese at any time  
19 that morning?

20 A I believe I did. I am not positively sure,  
21 but I believe I did.

22 Q Do you recall where he was?

23 A I believe he was in the --

24 MR. COFFEY: Your Honor, I am going  
25 to object if he is not sure he did. He is

1 [1144] speculating where he was.  
2

3 THE COURT: Well, your best  
4 recollection is yes or no?

5 THE WITNESS: My best recollection  
6 is yes because of the fact that I --

7 THE COURT: No, not because.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: You did see him. The  
10 next question is where?

11 BY MR. DANIELS:

12 Q Where?

13 A He would be in the outside of the court room.

14 THE COURT: Would be or was?

THE WITNESS: Was.

\* \* \*

14 [1026] Q During this 45 minutes to an hour, did you do  
15 anything?

16 A Yes.

17 Q What did you do?

18 A I was out in the corridor conferring with the  
19 various attorneys attempting to learn what was going to  
20 transpire from the attorneys. Also, the defendants who  
21 were there.

22 Q All right. And can you tell us who the  
23 individuals were by name that you saw out in the corridor  
24 during this 45 minute period starting at ten minutes past  
25 ten, 45 minutes to an hour?

1 [1027] A As I recall it, I talked to Nicholas Zinni,  
2 Mario Marsiglio, William Marrapese, John Sheehan, attorney.  
3 It was a long time. I think I remember John O'Neill,  
4 attorney.

5 THE COURT: Do you remember him or do  
6 you remember talking to him?

7 THE WITNESS: I think I remember  
8 John Sheehan. I think I seen not John O'Neill,  
9 but John -- I talked to John Sheehan.

\* \* \*

3 [1057] Q Is it your testimony then that William Marrapese  
4 and Mr. Zinni could have been in the hallway right up  
5 to the time of the jury selection process began at  
6 11:35?



7 MR. COFFEY: Objection, Your Honor.

8 I think the same objection was raised to a question  
9 I asked relating to Mr. Bucci, to what he could have  
10 been --

11 THE COURT: The question is bad as to  
12 form.

13 BY MR. DANIELS:

14 Q Is it your testimony, sir, that when you  
15 last saw Nicholas Zinni was at some time between 10:10  
16 and the time when the jury selection process began?

17 A It would have been probably ten to fifteen  
18 minutes even before that because as soon as I learned we  
19 were going to begin, I left that floor.

20 Q Before what, sir?

21 A Before we began the trial.

22 Q All right. Before you began the jury selection?

23 A Yes.

24 Q So it would be ten or fifteen minutes before  
25 11:35?

1 [1058] A Yes. Probably ten or fifteen minutes.

2 Q All right. And when did you see William Marrapese  
3 for the last time that morning?

4 A The last time would have been out in that  
5 corridor.

6 Q In this same conversation?

7 A Well, not the same conversation, but in the  
8 same area-way and the same time span.

\* \* \*

22 || [1127] Q Did you observe Mr. Marrapese at any time  
23 || that morning?

24 || A I believe I did, but I am not positive.

\* \* \*

23 || [1244] Q All right. But was Nicholas Zinni there?

24 || A Nick Zinni was.

25 || Q Was Bill Marrapese there?

26 || [1245] A. Yes. He was.

\* \* \*

4 || [1001] Q Do you recall what day of the week December 18,  
5 || 1973 was?

6 || A I believe it was a Tuesday, sir.

7 || Q Was there any particular reason why you began  
8 || the first run at 10:35 and why you began the second run  
9 || at 11:00 o'clock?

10 || A I had received a request earlier from  
11 || Special Agent James Watterson of the New Haven Office to  
12 || conduct such a trip, and he said he would like the trip  
13 || to be performed between 10 and 11 A.M.

14 || MR. DANIELS: Thank you very much.  
15 || Nothing further.

16 || THE COURT: You didn't tell us the  
17 || time of your second trial run.

18 || THE WITNESS: I initiated the second  
19 || trial run, Your Honor, at 11 A.M. --



20

THE COURT: The time consumed.

21

THE WITNESS: Oh, the time consumed was

22

14 minutes and 30 seconds.

\* \* \*

19

[994] Q. And how much time did this take?

20

A. This trip took me 14 minutes and 17 seconds.

\* \* \*

13

[997] Q Now, in making the trip from the Courthouse to Reservoir Avenue, William Marrapese's business, are there any traffic signals?

14

15

A Yes, sir.

16

17

Q Do you have any idea how many?

18

19

A There are two pedestrian stop signs and there are seven traffic lights.

20

21

Q And did you have a red light at any one or more of these traffic lights?

22

23

A I did not have to stop at either of the pedestrian stop signs as there were no pedestrians coming, and I hit every green light down to 986 Reservoir Avenue.

\* \* \*

12

13

[999] Q Did you lose any time at any red lights, any of these seven traffic signals on this second trip?

14

15

A Again, I was fortunate or unfortunate. I did not meet any red lights, any resistance at any red lights. They were all, again, green as I made this trip.

16

17

18

Q And again, were there any pedestrians in the pedestrian cross walks that you had to possibly stop for?

19

A No, sir.

20 Q So the seven traffic signals and the pedestrian  
21 stop signs did not impede your motion or increase the  
22 time; is that correct?

23 A Yes. sir.

\* \* \*

2 [177] MR. DANIELS: We will object --

3 MR. ZINNI: Objection, Your Honor.

4 MR. DANIELS: -- based on the grounds  
5 previously stated in the brief.

6 MR. ZINNI: The defendant, Zinni, joins  
7 in the objection.

8 THE COURT: You say this is as far as  
9 you are able to go today?

10 MR. COFFEY: I have finished with his  
11 testimony except for the playing of the tape  
12 recorder, yes.

\* \* \*



2       [84] MR. COFFEY: Ladies and gentlemen, before  
3       the next witness, the parties have entered into a  
4       very short stipulation. It is hereby agreed and  
5       stipulated between the parties that Daniel LaFolla,  
6       the victim of the dynamite bomb on September 29,  
7       1972, did not commit suicide, did not die of  
8       accident and did not place the explosive device  
9       which killed him.

\* \* \*

9       [1255] Q       What did you do after the completion of the  
10      Court that morning?

11               THE COURT: He said he had lunch with a  
12      lawyer named Rao. Did you not?

13               THE WITNESS: I did, Your Honor. Yes.

\* \* \*

22               [1478] The second thing that strikes anyone reading  
23      this indictment and certainly you have to consider  
24      the indictment is that dynamite was used and who  
25      had possession of dynamite? Without which this

1 [1479] device here obviously could not have functioned.

2 Two people. One, David Guillette, when he and  
3 John Housand burglarized Mike Lanoux's trailer  
4 in Manville, Rhode Island and took dynamite sticks  
5 and blasting caps which were then possessed by  
6 David Guillette to a place unknown. Who else?  
7 William Marrapese whose own voice you will hear  
8 in a few minutes state that he had possession of  
9 dynamite, and he is going to use it to take some-  
10 one off, to kill. Who? A witness, a witness in  
11 the Brooklyn Jail. Made to whom? This is one  
12 of the ironies in life that if you saw it in a  
13 movie, you would discount it as being a movie.  
14 He made it to the person, Daniel Lapolla, who  
15 later turned out to be a person who was killed  
16 by dynamite and who was a witness. Unknown,  
17 completely unknown to William Marrapese and  
18 Nicholas Zinni at the time that the very person  
19 they were making those remarks to was going to  
20 be a witness against them.

\* \* \*

8 [1480] Now, you see in front of you earphones, and  
9 I will ask you at this time to take those ear-  
10 phones together with the transcripts. Can I ask  
11 you to take them for a minute, please? When you  
12 listen to this tape recording, listen very



13 closely because you are going to hear the voices  
14 of Daniel Lapolla, William Marrapese and Nicholas  
15 Zinni. You are not going to hear them discuss  
16 what the Yankees did that day. You are not going  
17 to hear them discuss what new cars were bought.  
18 You are going to hear them discuss stolen M-16's  
19 and dynamiting the Brooklyn Jail.

20 (At this time the Court, Jury Members and Counsel listened  
21 to the tape from 11:06 A.M. to 11:15 A.M.)

22 MR. COFFEY: Twice during that conversation  
23 Daniel Lapolla refers to William Marrapese by  
24 name. "Billy. Hey, Billy, you trying to get  
25 rid of the rat population up there?" "Yeah."

1 [1481] "Whose up there? Whose up there?" "Oh, they got  
2 all kinds of witnesses up there." "We figure  
3 if the whole joint goes, we're guaranteed to get  
4 him." "We got eight sticks."

5 You may hear argued that Nicholas Zinni only  
6 said six words in the first part of the conversation,  
7 "He wants to buy the rifles?", and on the last  
8 part of the conversation he only says he wants  
9 coffee. But Nicholas Zinni was there during those  
10 remarks and Nicholas Zinni understood as William  
11 Marrapese said "We got eight sticks."

\* \* \*

11 [1620] Now, there are many items raised by both  
12 the Government and the defense, some of which  
13 are in conflict. Perhaps the most significant  
14 one, perhaps the one with which you can weigh, if  
15 it can be said this way, the credibility of the  
16 defense argument is to recall the statement by  
17 Mr. Daniels that William Marrapese's threat to  
18 blow up the Brooklyn Jail with witnesses inside  
19 of it was an idle boast. Is that an idle boast?  
20 Was it said with the same type of idle boast  
21 that he had just got through saying that he was  
22 setting \$100.00 apiece for the M-16's? Was that  
23 an idle boast that related to the offense under  
24 which he was ultimately indicted? It wasn't an  
25 idle boast. William Marrapese himself, out of

1 [1621] his own mouth, without knowing that he was being  
2 recorded, without having any idea that his state-  
3 ments would be challenged, which removes any  
4 motivation to lie, which is important. It was  
5 said in the relative security of knowing he was  
6 saying it to whom he believed to be a friend.  
7 He admitted culpability as to Nicholas Zinni in  
8 the gun case. He stated that they had enough  
9 dynamite, "We have enough dynamite to blow up  
10 the Brooklyn Jail." It's important because it



11 places in his possession an environment where  
12 there is no reason to lie. Possession of dynamite.

\* \* \*

5 [189] MR. ZINNI: If Your Honor, please, may  
6 I respectfully request that the Court instruct the  
7 jury for the limited purpose, as I understand it,  
8 for which this testimony is offered.

9 THE COURT: I don't recall any limited  
10 purpose, counsel.

11 MR. ZINNI: Well, I thought that it would  
12 be otherwise inadmissible. I thought it was  
13 intended by the Government to show motive or state  
14 of mind of something of that affect.

15 THE COURT: Well, I will tell the jury  
16 later on when I charge the jury, but I don't tell  
17 them why I admit things in evidence now. It is  
18 admitted and that is the state of the evidence.

19 MR. ZINNI: Thank you, Your Honor.

20 THE COURT: Now, shall we all put the  
21 earphones on? Everybody appears ready.

\* \* \*

190

1 [190] (At this time the tape recording  
2 (Government Exhibit 34) was played.)

\* \* \*

MICROFILM

United States District Court  
FOR THE

DISTRICT OF CONNECTICUT

United States District Court  
District of Connecticut  
FILED AT WATERBURY

JUN 28 1974

NEW HAVEN

United States of America

v.

WILLIAM MARRAPESE

No. H-524 Criminal

Sylvester A. Mikowski, Clerk

By: *[Signature]*

Deputy Clerk

On this 26 day of June, 1974, came the attorney for the government and the defendant appeared in person and by counsel

It Is ADJUDGED that the defendant upon his plea of "not guilty and a verdict of guilty has been convicted of the offense of violation of Title 18, United States Code, Section 241 in Count 1 (conspire to injure, oppress, threaten and intimidate a citizen of the United States of America in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States); Title 18, United States Code, Section 1503 in Count 2 (endeavored, by force and violence, to influence, intimidate and impede a witness in the Court of the United States) and Title 18, United States Code, Section 844(h)(1) in Count 3 (use an explosive to commit a felony prosecutable in a Court of the United States)

as charged in three (3) Counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of the remainder of his life on Count 1; five (5) years on Count 2; and ten (10) years on Count 3. The sentences of imprisonment imposed on Counts 1, 2, and 3 are to run concurrently with each other.

It Is ADJUDGED that

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to:

*[Signature]*  
United States District Judge

Clerk:

<sup>1</sup> Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." <sup>2</sup> Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup> Insert "in count(s) number" if required. <sup>4</sup> Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup> Enter any order with respect to suspension and probation. <sup>6</sup> For use of Court wishing to recommend a particular institution.



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

U.S. DISTRICT COURT  
HARTFORD, CONN.

JUL 5 3 27 PM '74

FILED

UNITED STATES OF AMERICA

VS.

WILLIAM MARRAPESE

CRIMINAL NO. H-524 *and*

NOTICE OF APPEAL

Now comes the defendant, William Marrapese, pursuant to the applicable rules, and hereby files his Appeal to the Second Circuit Court in the above-captioned matter, from the judgment, sentence & denial of New Trial Motion on 6/26/74.

William Marrapese  
By his Attorneys,

*Raymond J. Daniels*  
RAYMOND J. DANIELS, ESQ.  
86 Weybosset Street  
Providence, R.I. 02903

*John A. O'Neill, Jr.*  
JOHN A. O'NEILL, JR., ESQ.  
BUCCI, O'NEILL & COIA  
Nine Steeple Street  
Providence, R.I. 02903

CERTIFICATION

I hereby certify that I mailed a copy of the within Notice of Appeal to: Paul Coffey, Esq., Special U.S. Attorney, 450 Main Street, Hartford, Connecticut on this 3rd day of July, 1974.

*Jacqueline Desideri*

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## PROOF OF SERVICE

January 14, 1975

A. Daniel Fusaro, Esq. Clerk  
United States Court of Appeals  
for the Second Circuit  
Court House  
Foley Square  
New York, New York

Dear Sir:

Herewith are twenty-five copies of the brief and ten copies of the Appendix for the Appellant in No. 74-1941

UNITED STATES

v.

WILLIAM MARRAPESE, ET AL.

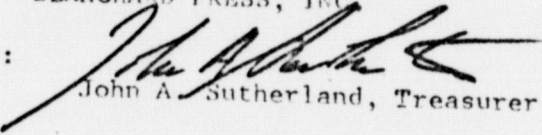
We certify that we have made service on opposing counsel by delivering two copies of each document to the post office with air mail postage prepaid: addressed as follows:

Paul E. Coffey, Esq.  
Special United States Attorney  
456 Main Street  
Hartford, Conn.

Respectfully,

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John A. Sutherland, Treasurer